TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~518.~~ 444

JOHN MAGWIRE, PLAINTIFF IN ERROR,

vs.

MARY L. TYLER ET AL., DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED MARCH 4, 1871.

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C. B. B.

1 THE UNITED STATES OF AMERICA,

To Mary L. Tyler, William C. Tyler, Eliza Tyler, Fannie Tyler, Roberta Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fedelio C. Sharp, Edward D. Hobbs, Marshall Botherton, John R. Shepley, Alfred Dryden & Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Franklin A. Dick, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary A. Lokenau, James R. Lackland, Henry S. Parker, James Parker; William E. Shepherd, Catherine Shoffey, Barnett Orrick, John Russell, Mary Vice, Nelly Delaney, Rebecca Dodd, Joseph Dennis, Frederick Schulenburg, and Adolph Brechler, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Missouri, wherein John Magwire is plaintiff in error, *plaintiff in error*, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David Wagner, presiding judge of the supreme court of the State of Missouri, this 25th day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

DAVID WAGNER,
Presiding Judge Sup. C't Mo.

The undersigned attornies of record for the defendants named in the within citation, admit that the same has been duly served on said defendants, this 25th day of April, 1867. We also admit that the subject-matter of the suit mentioned in said citation exceeds in value the sum of twenty-five thousand dollars.

JOHN R. SHEPLEY,
For self, and as att'y for the Defendants.
BRITTON A. HILL,
Att'y for Def'ts Res.

(Signed B. A. Hill, May 2, 1867.)

(Endorsed:) John Magwire, plaintiff in error, vs. Mary L. Tyler et al, deft's in error. Citation.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the March term thereof, 1867, between Mary L. Tyler and others, appellants, and John Magwire, appellee, a manifest error hath happened, to the great damage of the said John Magwire, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings

aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this twenty-third of April, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

[SEAL.]

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by—

DAVID WAGNER,
Presiding Judge Sup. Ct Mo.

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the supreme court, held at St. Louis, of the State of Missouri, certify that, in obedience to the within writ, herewith I transmit to the Supreme Court of the United States at Washington, a full, true, and complete transcript of the record and proceedings of the said supreme court of Missouri, in the above-entitled cause, as fully as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this nineteenth day of June, A. D. eighteen hundred and sixty-seven.

[SEAL.]

O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *D. C.*

(Endorsed:) John Magwire v. Mary L. Tyler and others. Writ of error. Filed April 25, 1867. O. T. Fishback, cl'k, per E. McCarty, dep. John M. Krum, Samuel T. Glover, for pl'ff in error.

3 STATE OF MISSOURI, *ss.*

Be it remembered that heretofore, to wit, on the thirtieth day of September, A. D. eighteen hundred and sixty-five, there was filed in the office of the clerk of the supreme court held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a certain cause lately pending in the St. Louis court of common pleas, which transcript was in the words and figures following, to wit:

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that heretofore, to wit, on the tenth day of December, A. D. 1862, there was filed in the office of the clerk of the St. Louis court of common pleas, within and for the county aforesaid, the pleadings and entries of proceedings in a certain suit commenced in the St. Louis land court on the eighteenth day of September, eighteen hundred and sixty-two. The petition wherein is in the words and figures following, to wit:

Style of case.

JOHN MAGWIRE
vs.
MARY L. TYLER, WILLIAM C. TYLER, ELIZA Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Robert Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fedelio C. Sharp, Marshal Brotherton, John R. Shepley, Edward D. Hobbs, Alfred Dryden & Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Franklin A. Dick, Louise R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary A. ———, James R. Lackland, Henry S. Parker, James Parker, William E. Shepherd, Catherine Shaffery, Barnett Orrick, John Russel, Mary Vice, Nelly Delany, Rebecca Dodd, Joseph Dennis, Frederich Schulenburg, and Adolph Boeckler, defendants.

Petition.

The plaintiff, John Magwire, states that on October 2nd, 1793, one Esther, a mulatress, residing in the town of Saint Louis, petitioned
4 Lieut. Governor Trudeau for a grant of land in the northern part of said town, situate on the border of the river Mississippi, to be bounded on three sides by the domain of His Majesty the King of Spain, and on the other by the shore of said river; the northern part to be situated between the Earth Barn (La Grange de Terre) & the bluff of said river, having on each end four arpents, running about from the east northeast, to the west southwest, and extending twenty arpents nearly, running from the east, north-northwest, to the south-southeast, to which petition was annexed a plat or diagram showing the barn & position of the tract as asked for. A copy of said petition and a translation thereof will be annexed & marked Exhibit "A."

October 3rd, 1793, said lieut. governor put said Esther in possession of the land petitioned for, as will appear by this certificate of that date, a copy & translation of which will be filed herewith, marked Exhibit "B."

October 5, 1793, said lieut. governor made a concession of said tract to said Esther in writing, a copy and translation of which will be filed herewith, marked Exhibit "C."

1st June, 1794, Joseph Brazeau petitioned said Lt governor for a tract of land in the western part of said town, situated beyond the foot of the mound called La Grange de Terre, four arpents in width, and to extend from the steep bank or beach (ecore) of the Mississippi, in the west quarter, southwest, by about twenty arpents in depth, to begin at the foot of the hill, on which stood said Grange de Terre, ascending in a northwest course to the environs of Stony Creek, so that the tract asked for be bounded on the east side by the Mississippi, on the other side in part by the King's domain, and in part by lands reunited to said

domain. A copy and translation of which will be filed and marked Exhibit "D."

June 10th, 1794, said l't governor put said Brazeau in possession of said land, as described in his petition, being four arpents in front by twenty arpents deep, and to extend in a northwest course from the foot of the hill, where stands the Grange de Terre, ascending to the vicinity of Rousseau de Pierre, (Stony Creek,) bounded on one side by the bank of the Mississippi, on the opposite side by lands not conceded or reunited to His Majesty's domain, and at the two ends; bounded at the end west by the vicinity of Rocky Creek, and on the other, i. e., the southeast, by the land granted to the free mulatress, Esther, as will appear by said l't governor's declaration in writing, a copy and translation of which will be filed and marked Exhibit "E."

June 25, 1794, said l't governor made a concession of said land to said Brazeau; a copy and translation of which will be filed and marked Exhibit "F."

Said Brazeau took possession of said land as granted, and possessed and cultivated the same, until he sold and conveyed part of said 4 x 20, viz, 4 x 4 arpents, to Pierre Chouteau, as hereinafter stated.

May 9, 1798, said Brazeau sold and conveyed to Louis Labeaume sixteen arpents, part and parcel of said tract land so *so* conceded to said Brazeau, reserving to himself four by four arpents thereof in the southern part of said concession of four by twenty arpents, to do as he should please with them. A copy and translation of his deed will be filed and marked Exhibit "G." After the execution of said deed by Brazeau to Labeaume, said Labeaume made his petition to said l't governor, stating he had purchased of said Brazeau a parcel of land having a limited depth, and asking a grant of 360 arpents, including what he had acquired of Brazeau, that is, twenty arpents in depth from the Mississippi River, ascending Rocky (creek) Branch, west quarter south, by sixteen arpents front, along the Mississippi River, to be taken from the descent of the road into the creek, which was the same front of the petitioner's land, and representing that the angle made by the perpendicular line from the road to the river by the creek, and by the river, would about complete the quantity of land asked for by the petitioner. A copy and translation of said petition will be filed and marked Exhibit "H."

No concession was made by Spanish authority to said Labeaume of any part of the land prayed for in his petition.

February 15th, 1799, said l't governor ordered a survey to be made on Labeaume's petition, and said Labeaume to be put in possession. A copy and translation of said order will be filed and marked Exhibit "I."

April 10, 1799, Antonio Soulard, acting surveyor of the province, made a survey of Laubeaume's tract, but not in conformity to the order of the l't governor or Labeaume's petition. Either by mistake or design, said Soulard so made the survey as to include the whole of said 4 x 4 arpents reserved by Brazeau for himself in the southern part of the tract of 4 x 20 arpents, as will fully appear by reference to the survey, a copy and translation of which will be filed and marked Exhibit "J."

September 22d, 1810, the board of the commissioners for the adjustment of land titles in the territory of Missouri, acting upon said concession to Brazeau, Brazeau's deed to Labeaume, and Soulard's survey, confirmed to said Joseph Brazeau four by four arpents of the said four by twenty arpents of land, being the same reserved by Brazeau, and conveyed to Pierre Chouteau as herein stated, and being part of the

area within Labeaume's survey and claim. Said confirmation will be filed hereunto and marked Exhibit "K."

June 14, 1811, said commissioners issued patent certificate No. 983, whereby they declared Joseph Brazeau entitled to a patent to the land reserved by him in his sale to Labeaume, and ordered the same to be surveyed agreeably to said reserve. A copy of which certificate, No. 983, will be filed herewith and marked Exhibit "L."

June 26, 1816, said Joseph Brazeau and Theresa, his wife, conveyed to Pierre Chouteau the said four by four arpents reserved as aforesaid. A copy of this deed and translation is filed and marked Exhibit "M."

In November, 1817, by authority of the United States, the tract of 4 x 4 arpents sold by Brazeau to Chouteau was surveyed by Joseph C. Brown, deputy surveyor. A copy of which survey will be filed and marked Exhibit "N."

6 This survey included, with Brazeau's tract of 16 arpents, Louis Labeaume's tract also, and is entitled Survey No. 982 and 983, by Joseph C. Brown, Nov., 1817, of the confirmations to Labeaume and Brazeau; two tracts in one.

June 1st, 1826, Pierre Chouteau and wife sold and conveyed to George F. Strother the said 4 x 4 arpents of land confirmed to Joseph Brazeau. A copy of this deed will be filed and marked Exhibit "O."

September 3d, 1830, said Strother and wife conveyed said 4 x 4 arpents to John Mullanphy and John O'Fallon, in trust for the sole use, benefit, and behoof of the Saint Louis Marine Railway Company in such manner that said trustees were to obey the within instructions of said company in all things relative to said premises. A copy of this deed will be filed and marked Exhibit "P."

Said Geo. F. Strother died in November, 1840. Alexander Hamilton took letters of administration on his estate. A copy of said letters will be filed and marked Exhibit "Q."

Said Hamilton, in the course of his administration, and in conformity to the orders of the probate court of St. Louis County, on the 4th day of May, 1846, sold said 4 x 4 arpents of land at public vendue at the court-house in said county, to the plaintiff, who was then and there the highest and best bidder for the same. This sale was approved by the court, and on the 4th June, 1846, said administrator delivered to the plaintiff his deed, conveying the said land and all said Strother's interest in same to the pl'ff. A copy of this deed will be filed and marked Exhibit "R."

January 2, 1852, (said Mullanphy being dead,) said O'Fallon as the surviving trustee of said railway co., by the written directions of said company, conveyed said 4 x 4 arpents of land to the pl'ff. A copy of this deed will be filed and marked Exhibit "S."

On the day of May, 1859, the said grant to Esther was surveyed by authority of the United States, and a copy thereof will be filed and marked Exhibit "T."

The said of 4 x 4 arpents of land confirmed to Brazeau is situate in the northern part of the city of Saint Louis, and county of Saint Louis, and is bounded as follows: Beginning at a point on the right bank of the Mississippi River, the northeast corner of survey No. 3342, in the name of Esther, free mulatress woman, or her legal representatives, and the southeast corner of Louis Labeaume, survey No. 3333; thence south 74° 30′ west with the southern boundary of the Louis Labeaume survey and the northern boundary of the Esther survey, to the northwest corner of the Esther survey; thence north 23° west 776 feet 8 inches, to a stone; thence 74° 30′ north 776′ 8″ inches, to a point on the right bank of the Mississippi River; thence down and along the right bank of said river, south 23° east 770 feet, to the beginning corner.

And the pl'ff says the said tract of land, so meted and bounded, justly and honestly belongs to pl'ff. That notwithstanding the right of the pl'ff thereto, as assignee and legal representative of said Brazeau,
7 the deft's and others in combination and confederacy, on the 26 day of Feb., 1852, procured a survey to be made under the authority of the United States, for Louis Labeaume, or his legal representatives, which embraced the whole tract of 4 x 4 arpents aforesaid, belonging to the pl'ff, and set the same apart for said Labeaume, or his legal representatives. Afterwards, on the 25th day of March, 1852, said defendants and others, in combination and confederacy with them, procured a patent to be issued upon said survey for Labeaume, or his legal representatives; that said survey and patent were issued and procured by fraud, covin, and misrepresentation.

The def'ts, Mary L. Tyler, William C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta A. Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Louis A. Labeaume, Harriet M. Dean, Benjamin F. Jennings, William L. Ewing, Joseph Cochran, Joseph Templeton, Fidelio C. Sparp, Marshal Brotherton, John R. Shepley, Edward D. Hobbs, Alfred Dryden, and Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, and Mary Gordon, Franklin A. Dick, Louisa R. Brown, James B. Brown, Robert B. Brown, Mary Ann Lakenan, James R. Lackland, and Laura H. Brown, and each of them claims to own an interest in the said 4 x 4 arpents of land under said Louis Labeaume, by some deed, assurance, or contract made with said Labeaume, or some person claiming under him. The defendants, Henry S. Parker, James Parker, Marshall Brotherton, Alfred Dryden, William E. Shepherd, Catherine Shaffey, Barnett Orrick, John Russell, Mary Vice, Nelly Delany, Rebecca Dodd, Joseph Dennis, Frederick Schulenburg, and Adolph Boeckler, and each of them claims to own an interest in said 4 x 4 arpents of land under said Louis Labeaume, by some deed of assurance or conveyance made with him, or some person claiming under him, and is in actual occupation and possession of some portion of said tract of 4 x 4 arpents of land. That each one of said def'ts, claiming an interest in or occupying said tract prior to the acquisition of any interest or claim therein, had notice of the interest or claim of pl'ff in said land under said Brazeau.

On the twenty-sixth day of May, 1862, the said 4 x 4 arpents of land reserved by Brazeau, was surveyed by authority of the United States, whereby said 4 x 4 arpents of land was laid off in the southeast corner of said survey, for Louis Labeaume's rep's, and with its southern boundary coincident with the northern boundary of the Esther tract, and said survey was approved; and afterwards, on the 10 June, 1862, a patent was issued to said Brazeau, or his legal representatives, and his and their heirs and assigns, for said 4 x 4 arpents of land. Said survey and patent will be filed herewith, marked Exhibit U, and is refer'ed to a more fully describing the said tract of land reserved by Brazeau.

That the survey and patent to Louis Labeaume, or his legal representatives, in so far as they conflict with said survey and patent to Brazeau, or his legal representatives, is cloud upon the title of the pl'ff.
8 Said patent and survey for Labeaume and his legal representatives, are older than the patent and survey for Brazeau, and his legal representatives; and the claimants under Labeaume continually assert the validity of the former and the invalidity of the latter. That said d'f'ts have combined and confederated to keep pl'ff from the possession of said lands, and have received the rents and profits thereof, in amount not less than twenty-five thousand dollars. That said 4 x 4 arpents are worth two hundred and fifty thousand dollars.

Wherefore, and to the end that equity and justice may be meted out to the pl'ff, and that he may be protected and established in his just rights, the plaintiff prays as follows: That this court, by its judgment and decree, will divest out of the defendants all the right, title, and interest acquired or claimed by them, and each of them, from Louis Labeaume, or any one claiming under him, and invest the same in the plaintiff, and put him in possession thereof. That an account may be taken of the rents and profits accrued while defendants have been in possession of said premises, and that plaintiff may have judgment therefor, and the plaintiff prays for such other relief as may be proper in the case.

John Magwire, plaintiff in the above-entitled cause, being duly sworn, on his oath states that the above petition and the matters and things therein stated he believes to be true.

JOHN MAGWIRE.

Subscribed and sworn to before me, this 18th day of September, 1862.

ROBERT WHITE, *Clerk*,
By CHARLES LEVY, *D. C.*

Thereupon the following summons issued, to wit:

Summons.

THE STATE OF MISSOURI, *County of Saint Louis, ss:*

To the Sheriff of St. Louis County, greeting:

We command you to summon Mary L. Tyler, William C. Tyler, Eliza Tyler, Emma Tyler, Fannie S. Tyler, Robert Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Marshall Brotherton, John R. Shepley, Edward D. Hobbs, Alfred Dryden, and Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Franklin A. Dick, Louise R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary A. Lakenan, James R. Lackland, Henry S. Parker, James Parker, William E. Shepherd, Catherine Shaffey, Barnett Orrick, John Russell, Mary Vice, Nelly Delany, Rebecca Dodd, Joseph Dennis, Frederick Schulenburg, and Adolph Boeckler, to appear before the judge of our St. Louis land court, on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the second Monday of October next, then and there
9 to answer the complaint of John Magwire, as set forth in the annexed petition, and have you then and there this writ.

Witness, Robert White, clerk of our said court, with the seal thereof hereto affixed at office, in the city of St. Louis, this eighteenth day of September, in the year of our Lord eighteen hundred and sixty-two.

ROBERT WHITE, *Clerk*,
[L. S.] By E. P. WALSH, *D. C.*

Whereupon the sheriff made the following return, to wit:

Sheriff's return.

Executed this writ in the county of St. Louis, on the twenty-second day of September, 1862, by delivering a copy of the writ, as furnished by the clerk, to James R. Lackland, and by delivering a copy of the writ, as furnished by the clerk, to Marshall Brotherton, on the 23d day of September, 1862; by delivering a copy of the writ, as furnished by

the clerk, to each of the following-named defendants, to wit: Henry S. Parker, James Parker, Catherine Shaffey, Mary Vice, Nelly Delany, Rebecca Dodd, Alfred Dryden, and Margaret Dryden, and by leaving a copy of the writ, as furnished by the clerk, at the usual place of abode of each of the following-named defendants, to wit: William E. Shepherd, Barnett Orrick, John Russell, and Joseph Dennis, on the twenty-fourth day of September, 1862; by delivering a copy of the writ, as furnished by the clerk, to each of the following-named defendants, to wit: William L. Ewing, Joseph Templeton, John R. Shepley, Elizabeth Gordon, and Mary Gordon, and on the twenty-fifth day of September, 1862, by delivering a copy of the writ, as furnished by the clerk, to each of the following-named defendants, to wit: Mary L. Tyler, William C. Tyler, Eliza Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, Harriet M. Dean, Franklin A. Dick, and by delivering a copy of the writ and petition, as furnished by the clerk, to Isaac H. Sturgeon, and on the 26th day of September, 1862, by delivering a copy of the writ, as furnished by the clerk, to Adolph Boeckler, and by leaving a copy of the writ, as furnished by the clerk, at the usual place of abode of Minerva Gordon, a white person of her family, over the age of fifteen years, and on the 27th day of September, 1862, by delivering a copy of the writ, as furnished by the clerk, to Thomas L. Sturgeon, Alice Tyler, James Guthrie, William Chambers, Benjamin F. Jennings, Joseph Cochran, Fidelio C. Sharp, Edward Hobbs, Louise R. Brown, James B. Brown, Robert Brown, Laura H. Brown, and Frederick Schulenburg, not found in my county.

JOHN H. ANDREWS, *Sh'ff*,
By JOHN H. CURTIS, *Deputy*.

10 *Answer.*

Afterwards, on the sixth day of November, 1862, the following answer was filed, to wit:

In the St. Louis land court, October term, 1862.

JOHN MAGWIRE, pl'ff,
vs.
MARY L. TYLER, WILLIAM C. TYLER, ELIZA Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, and William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Marshall Brotherton, John R. Shepley, Edward D. Hobbs, Alfred Dryden, Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, Maria Gordon, Franklin A. Dicks, Louise A. Brown, Robert E. Brown, Mary A. Lakenan, James B. Brown, Laura H. Brown, James R. Lackland, Henry S. Parker, James Parker, William E. Shepherd, Catherine Shaffey, Barrett Orrick, John Russell, Mary Vice, Nelly Delany, Rebecca Dodd, Joseph Dennis, Frederick Schulenburg, and Adolph Boeckler, defendants.

For answer preliminary.

The defendants, Fannie S. and Roberta Tyler, are minors under age. The block No. one, comprising lots one, two, three, and *and* fractional lot (a,) being about three hundred feet on Main street, by three hundred feet on the south line of Labeaume's patent, to the *river* Mississippi River; bounded north by Webster street of the city of St. Louis, east by the river, south by Labeaume's old ditch, and west by Main street, are now unlawfully in the possession of said John Magwire, within the said Labeaume's patent, and a suit is pending in the St. Louis land court by said Guthrie & Chambers, trustees, as aforesaid, to eject said Magwire and his tenants out of said premises.

The said defendants, each answering for himself or herself, severally further answer the plaintiff's petition, and state severally, as follows: That the premises in controversy are situate on the river Mississippi, about four arpents north of the Big Mound, a most noted monument in St Louis, called by the French La Grange de Terre, (Earthen
11 Barn.) This mound is an artificial erection, situate on the brow of the first bank of the prairie, west of the bank of the said river, at the distance of about twenty-eight arpents north of the northern wall of the fortifications of the old Spanish town of St. Louis, and about four and a half arpents west from the bank of the river. The bank on which the mound stands is the eastern boundary of the Grand Prairie, covered by the St. Louis common field, and the lands descends with a gentle slope from the brow of it to the small prairie, or bottom land between it and the river. The bank of the prairie is about 4½ arpents west of the river bank, where the mound stands, and about sixty feet above the level of the prairie, along the river, and it runs nearly parallel with the river, at that distance from it, for a mile or more towards the south; at the north foot of the mound, this bank of the prairie curves towards the northwest, and running to the southwest corner of the southern and western ditches of Labeaume, as marked on the Spanish survey of Labeaume's concession in 1799; it thence runs about 16 arpents northwardly, parallel with the river, at the distance of about seven arpents from the bank of the river, where it becomes broken, and the land descends more or less abruptly into a small creek, called the Rocky Branch, about twenty-five and a half arpents north of the mound; south by the Big Mound, about eighteen arpents distant, there are small mounds on the same bank of the prairie; the bank of the prairie is higher where the Big Mound stands than at any other point between the old town of St. Louis and the Rocky Branch. The first Spanish grant, north of the town of St. Louis, on the Mississippi River, was made to Esther, a mulatress, in October, 1793, by the following description: The north part of the present concession shall be situated between the hillock named the Earthen Barn and the bank of the Mississippi River; thence descending the said river, as far as the complement and extent of twenty arpents in length, etc.

This description locates the north line of Esther's grant between the Big Mound and the river, and the call for quantity is to the extent of twenty arpents south of that point on the river. The second Spanish grant, on the river, north of the town, was made in June, 1794, to Joseph Brazeau, under whom the plaintiff claims. Brazeau petitioned for lands situated beyond the foot of the mound called Earthen Barn, of the width of four arpents, etc., and the grant to him was for four by twenty arpents "from the foot of the hill where the Earthen Barn is situated; thence up to the environs of the Rocky Branch, &c." No Spanish or United

States survey has ever been made of either of these grants, but Esther and Brazeau took possession of their respective tracts of land as granted, the one south of, and the other north of the Big Mound. Esther possessed, as the land granted to her, that portion which lay south of the Big Mound, between it and the Small Mounds, embracing the Little Prairie between the banks of the prairie and the river Mississippi; and Brazeau possessed, as the land granted to him, the Little Prairie north of the Big Mound, along the river; he cultivated fields up to the
12 foot of the Big Mound, and built a lime-kiln on the bank of the river, about two and a half arpents north of said mound. The Big Mound was the great natural monument that designated the division line between the possessions of the two parties, Esther and Brazeau, in Spanish times.

On the second of September, 1794, Esther conveyed her interest in the grants to her, to Jacques Clamorgan, her lord and master, by deed, and Joseph Brazeau was a subscribing witness thereto. In August, 1797, the Esther grant was annulled by the lt. governor for the reason that the delay granted to begin improvements had expired, and a grant of six hundred feet square was made at the same time to Antoine Roy upon the same lands, that is, upon the southern portion of Esther's grant. (See Roy's grant.) When Soulord, the Spanish surveyor general, was about to survey the Roy tract, he notified Clamorgan, as the owner of the Esther grant, according to the Spanish custom, and Mr. Clamorgan formally claimed "that the ground on which he was operating had been granted to him for a number of years." The southwest corner of the Roy tract is 19 arpents south of the north foot of the mound, and about twenty-three arpents south of Labeaume's south ditch. On the ninth of May, 1789, Brazeau sold, by deed, four by sixteen arpents of his tract to Louis Labeaume, under whom defendants claim, and reserved his field and lime-kiln near the Big Mound.

The descriptive words of the deed are which consist of four arpents of land to be taken from the foot of the hill or mound commonly called (La Grange de Terre,) the Earthen Barn, by twenty arpents in depth, bounded by the Rocky Branch, at the extremity, which is opposite the said mound; east by the Mississippi River, and west by the King's domain. The said Brazeau "reserving to himself four arpents of land from the foot of the mound, in the south part of the tract." This deed was executed before the lieutenant governor, who officially certified to the sale. The confirmation under which the plaintiff claims, was void; the board of commissioners in 1810 having no jurisdiction of Brazeau's claim, for want of notice to the recorder of land titles thereof, by Brazeau. Labeaume, after said purchase of Brazeau in 1798, enclosed the land with embankments of earth and ditches. The highest of the embankments from the bottom of the ditches being about six feet, and on the top of the embankments pickets were driven into the ground, so as to make a stockade enclosure. He also erected houses upon the grounds inclosed, and lived there with his family from 1798 until 1814, and left his agent in possession from that time until April, 1816, when he sold to William Chambers. The north and south ditches of Labeaume were sixteen arpents and forty French feet apart; Brazeau's lime-kiln was three hundred feet south of the south ditch of Labeaume; and he worked that kiln, and cultivated the fields south of the ditch up to the time he sold to Labeaume, and after the sale he rented to one Brazeau.

It appears from a deed made by Brazeau to Pierre Chouteau, in 1816, that at the time of the deed to Labeaume, of 1798, Brazeau had made a verbal sale of the 4×4 arpents at the foot of the mound to

13 Pierre Chouteau. (See deed referred to.) In February, 1799, Labeaume asked for a grant of 360 arpents of land, including the part which he had acquired of Brazeau; that is to say, 20 arpents in depth from the Mississippi, along the Rock Branch, west one-fourth south by sixteen arpents front, along the river, to be taken at the descent of the road into the branch, which is the very front of the petitioner's land. The angle formed by the line perpendicular from the road to the river, will nearly complete the land demanded by the petitioner, &c. (See petition and grant referred to.) On this petition, the same lieutenant governor, who certified to Brazeau's reservation, ordered a survey the seventeenth of February, 1799, and on the second of March, 1799, Don Antonio Soulord, Spanish surveyor of Upper Louisiana, made the survey in the presence of the adjoining neighbors, according to the Spanish custom, and returned the plats and notes of survey, which were duly recorded in the archives of the government, on the 15th of April, 1799. On Soulard's survey, the ditches are marked and the houses of Labeaume, and the quantity of land surveyed was 374 arpents. The south ditch of Labeaume is four arpents and twenty French feet north of the north foot of the Big Mound, at a point four arpents west of the river.

The reservation of Brazeau, by his deed of 4 x 4 arpents, on the Mississippi, from the foot of the big mound, locates it south of and adjoining the southern ditch of Labeaume.

In February, 1806, Labeaume filed his claim for confirmation, under the act of Congress of the second March, 1805, as follows: "Louis Labeaume (claims) 374 arpents of land, conceeded in part to Joseph Brazeau, the 20th of June, 1794, and the other part to Louis Labeaume, the 15th February, 1799, settled and cultivated since both these dates. Under this claim he filed the following papers, evidences of title, pursuant to the act of Congress, and they were duly recorded by the recorder of the land titles, to wit:

1st. The petition of said Brazeau for 4 x 20 arpents.

2nd. The order of survey by Zenon Tradeau, lieut. governor, thereon.

3d. The grant to Brazeau of 4 by 20 arpents.

4th. The certificate of the sale of 4 by 20 arpents by Brayzau to Labeaume, with a note of the reservation of 4 arpents written on the grant by the lieut. governor, as follows: I do certify that the above concession, except 4 arpents, has been sold, etc., to Louis Labeaume, by deed proven before us the 9th May, of this year, and deposited in the archives of this port, St. Louis, of Illinois, the 12th of May, 1798.

"ZENON TRADEAU."

5th. The petition of Labeaume for an extension of the 16 arpents front, purchased of Brazeau, 20 arpents west, and for the angle at the Rocky Branch about 360 arpents.

6th. The order of survey by Tradeau to Soulard.

14 7th. The survey of Soulard of 374 arpents, and his plat thereof, for Louis Labeaume.

On the presentation of this claim upon the foregoing papers, the clerk, who read the certificate annexed to the grant to Brazeau, supposed the four arpents reserved were within Soulard's survey of 374 arpents, and he entered in the minutes that Labeaume's grant included the whole of Brazeau's grant.

This was a mistake of the clerk, who did not have the Brazeau deed before him, but only the governor's certificate. Mr. Labeaume abandoned all claim under the Brazeau grant, and demanded a confirmation

directly under the one to himself, the Soulard survey. The board, upon proof possession in 1800 by Labeaume, and that he was the head of a family, confirmed to him 356 arpents, and four arpents to Joseph Brazeau; and ordered that the same be surveyed, agreeably to a concession from Zenon Tradeau to Louis Labeaume, and, as respects the 4 arpents, agreeably to the reserve made in the sale from Brazeau to Labeaume, recorded in book C, page 339, of the recorder's office.

This confirmation was made 22 September, 1810, and confirmation certificates were duly issued, one to Labeaume, and one to Brazeau. Brazeau, at time of this confirmation to him, did not own, or claim to own, the said reservation; he had sold it to Pierre Chouteau, who had included the whole of it in a larger grant made to him by an order of survey of October, 1799, surveyed the 17th June, 1803. In P. Chouteau's petition of 1799, he asked for the land bounded north by the line of Mr. Labeaume's tract, south by the line of Mr. Antoine Roy's tract, east by the river, and west by the domain of His Majesty. Chouteau was the owner of the Brazeau reservation at the time of the Soulard survey of Labeaume's tract.

In June, 1803, when Chouteau's grant was surveyed by Mr. Soulard, the parties, Labeaume and Chouteau, were present, and Labeaume's south ditch was marked upon the plat as a part of the north line of Chouteau's tract, and the surveyor returned his plat of boundaries, stating thereon that Chouteau's tract was bounded north by the land of Louis Labeaume. This confirmation to Brazeau, under which plaintiff claims, is null and void; the board had no jurisdiction over the Brazeau case, and no notice had been filed by Brazeau, or any one for him, for the confirmation. Pierre Chouteau procured a confirmation in 1809, from the same board of commissioners, for the land between Labeaume and Roy. He purchased the Esther claim of Clamorgan in 1810, and procured the formal title of the reservation from Brazeau in 1816, by deed, which describes the reservation, three times, as land "to be taken from the foot of the mound called the Earthen Barn. (See deed from Brazeau to Chouteau.)

In 1817 Rector and Bancroft entered, for Henry Peyroux, all the land south of Lebeaume's south ditch, including the reservation, and all of Pierre Chouteau's tract under a New Madrid earthquake certificate, No. 184. Pierre Chouteau, on the 20th of May, 1826, protested, in writing, to the Commissioner of the General Land Office against the issuing of a patent on said certificate, that it covered the whole of a small tract of 16 arpents which he had purchased from Mr. Joseph Brazeau, to whom it had been confirmed by the board of commissioners.

This is a solemn act of location by Chouteau of the reservation south of Labeaume's tract. Chouteau conveyed the reservation to Strother in June, 1826; Strother's administrator to John Magwire in June, 1846; and Magwire founds his suit on this title, through Pierre Chouteau. The plaintiff has no conveyance from Brazeau for any land north of the south ditch of Labeaume. If Brazeau's grant was included within Soulord's survey for Labeaume, then Mr. Brazeau located his reservation in the wrong place. But if the mistake in the deed from Brazeau to Labaaume be admitted, and if he located his reservation at the foot of the mound, when he intended to locate it north of the south ditch of Labeaume's, it is too late to relocate it now, for the title of Brazeau passed to Labeaume in 1798 for the whole of Brazeau's tract, excepting only 4 by 4 arpents at the foot of the mound.

If Brazeau had no land where he reserved these 16 arpents, he, or

Chouteau, his vendee, should have proceeded to correct the mistake in the deed of 1798, during the time Labeaume held his title.

But Labeaume held possession, according to the terms of his deed and Soulard's survey, for eighteen years, when he sold the whole tract of three hundred and seventy-four arpents to William Chambers, by deed of April, 1816, for $7,460, a full consideration; and Chambers had no notice of the alleged mistake in the location of Brazeau's reservation, and he was not put upon inquiry by the title-papers; and he was an innocent purchaser, for a valuable consideration, of the tract embraced within the Soulard survey. Up to the purchase by Chambers, the grantor of the defendants, there never had been any claim by Joseph Brazeau or Pierre Chouteau for the location of the reservation north of the south ditch of Labeaume. From 1799 until 1823 Mr. Chouteau had acquiesced in the possession of Labeaume to the south ditch, which ditch was established by the surveyor general of the Spanish provence of Upper Louisiana, in March, 1799, as the division-line of a stockade-fence between Labeaume's land and Brazeau's reservation; and this is an estopel against Pierre Chouteau and all persons claiming under him, including plaintiff.

In October, 1799, Mr. Chouteau, in his petition to the lieut. governor, recognized the ditch and stockade-fence of Labeaume as the boundary between Labeaume and himself; and he calls the land north of that boundary Labeaume's land. In June, 1803, Mr. Choteau's survey of his grant was made by the same surveyor, in his presence, and in the presence of Labeaume, when the stockade fence or ditch of Labeaume was again officially established as a division-fence between Labeaume and Chouteau.

For fifty-nine years prior to this suit Labeaume and Chouteau and their grantees have possessed their land, the one south of and the other north of this stockade fence and ditch, so recognized and estab-
16 lished as the boundary line between their respective tracts.

And these defendants further state that by the said recognition of the south ditch of Labeaume as the boundary line between the lands of said Pierre Chouteau and Louis Labeaume for so long a period of time, they, the said Pierre Chouteau and Louis Labeaume, and all persons claiming through or under them as parties or privies, are mutually bound and estopped from disputing the same or claiming adversely thereto, and that the long possession of said parties and their privies of the said several tracts of land in accordance therewith has vested a complete title in the said representatives of Louis Labeaume to the land in United States survey No. 3333.

These defendants aver that the said southern ditch was dug for the purpose of making an embankment on the northern margin thereof, to serve as an enclosure, and on the top of the said embankment pickets were driven into the ground, so as to make a stockade enclosure of that part of Louis Labeaume's tract.

Defendants deny that the survey by Soulard of 1799 for Labeaume included any part of the four by four arpents reserved by Brazeau in his deed to Labeaume of 1798.

Defendants deny that the proper or true location of said four by twenty arpents of Joseph Brazeau was, or is, as stated in plaintiff's petition, but, on the contrary thereof, the location of the southern part of said Brazeau's tract was truly given by the said United States survey No. 3332.

Defendants deny that Louis Labeaume ever recognized the right of a proprietorship of said Joseph Brazeau to said sixteen arpents of land,

known as Brazeau's reservation, at any other place than as located by said United States survey No. 3332, for Joseph Brazeau's legal representatives; and the possession of said Brazeau, and Pierre Choteau, his grantee of said reservation, was in accordance with said United States survey No. 3332; and the said Labeaume always claimed the land within Soulard's survey, and the survey of the United States No. 3333, as the land belonging to him.

Defendants aver that said land north of Labeaume's ditch was always held in possession by actual possession, and by notorious acts of ownership on the part of Chambers, Christy, Wright & Christy, and their representatives and grantees, from and after the year 1816 until the year 1846, continuously, and adverse to all other persons.

These defendants deny that the said deed of the twenty-sixth of July, 1816, conveyed the said Brazeau tract to said Pierre Chouteau, or any part thereof north of said southern ditch of Labeaume; but, on the contrary thereof, the said deed only purports to convey four arpents by four arpents at the foot of the Big Mound, south of said southern ditch of Labeaume.

These defendants deny that the said survey of 1817 was made by authority of the surveyor general of the United States for the district of Illinois and Missouri.

And they deny that the said four by four arpents of the Brazeau reservation were surveyed under said alleged survey of 1817.

17 And these defendants aver that said survey of 1817 was not made pursuant to any lawful instructions, and they further aver that the said survey was never approved according to law; but, on the contrary thereof, the said survey was signed by the surveyor general by mistake; and the same was annulled and disapproved, and never was held and recorded as a valid or binding survey by the United States.

These defendants deny that the said deed of the first of June, 1826, from Pierre Chouteau and wife, to George F. Strother, conveyed any land north of the southern ditch of Louis Labeaume. And they deny that the said deed of George F. Strother and wife, to the trustees of the Marine Railway Company, conveyed any land north of the southern ditch of Labeaume. Defendants have no knowledge or information sufficient to form a belief whether the property, personal, belonging estate of said George F. Strother, was insufficient to pay and satisfy the debts established against said estate; nor whether said administrator made application to said probate court in due form of law, and obtained an order from said court authorizing said administrator to sell said real estate as alleged, or whether said Brazeau's reservation, located as claimed by the plaintiff, was included therein, or whether said premises in question were sold in conformity with law, as stated in plaintiff's petition.

Defendants deny that the plaintiff acquired the right, title, and interest of the Marine Railway Company in and to the premises in question, by deed of the 2nd day of January, 1852, as alleged, and defendants have no information or knowledge sufficient to form a belief whether the said John O'Fallon was authorized, in due form of law, by the said Marine Railway Company to convey the said premises in question to the plaintiff.

These defendants deny that the said tract of land alleged to have been confirmed to Joseph Brazeau, and to have been acquired by plaintiff, is designated or known by any such description or boundaries as are set forth in plaintiff's petition; but, on the contrary thereof, is well known as four by four arpents at the foot of the mound called La Grange

de Terre, bounded north by the southern ditch of Labeaume's tract, which is identical with the southern line of Labeaume's patent, as surveyed in 1852, and east by the Mississippi River.

These defendants deny that they, in confederacy or combination, on the twenty-sixth day of February, 1852, or at any other time, procured a survey to be made, under the authority of the United States, for Louis Labeaume, or his legal representatives, so as to embrace any part of the Brazeau reservation, or of the plaintiff's land.

These defendants deny that they, by any combination or confederacy, procured a patent to be issued upon said survey for Labeaume or his legal representatives.

These defendants deny that said survey for Labaume, and said patent thereon, were issued or procured by any fraud, covin, or misrepresentation. These defendants deny that at the time, or prior to
18 the acquisition by them of their several interests, or titles, or claims in or to said land, they had any notice of the interest or claim of the plaintiff under said Brazeau. These defendants deny that they have ever received any such amount of rents and profits from said land, as stated by plaintiff, or any rents and profits over and above the taxes and expenses thereof. These defendants aver, that under the said confirmation to Louis Labaume, and pursuant to the certificate of confirmation thereon, an United States survey of said confirmation was duly made and approved by the surveyor general of Illinois and Missouri, in 1852, and the said survey was duly certified to the recorder of land titles, and he issued a patent certificate thereon; and thereupon the United States duly issued and delivered a patent pursuant to said survey, to Louis Labeaume and his legal representatives, and said survey and patent include the premises sued for by the plaintiff, and the defendants severally derive their title to the said premises, from and through said Louis Labaume; said patent issued 25th March, 1852.

These defendants further aver that under the said alleged confirmation to Joseph Brazeau, and pursuant to the certificate of confirmation thereon, an United States survey of said Brazeau's confirmation was made, and duly approved by the surveyor gen. of Illinois and Missouri, in 1852; and the said survey was duly certified to the recorder of land titles, and he issued a patent certificate thereon; and thereupon the United States duly issued a patent, pursuant to said survey, to Joseph Brazeau and his legal representatives, and the said survey and patent under the said confirmation do not include the premises in controversy or any part thereof; and these defendants aver, that the said patent to said Joseph Brazeau, or his legal representatives, was duly forwarded to the recorder of land titles, to be delivered to the legal representatives of Joseph Brazeau, and that the same was demanded by one of the legal representatives of Joseph Brazeau, of the said recorder of land titles, but the same was refused to be delivered, and although the said Brazeau's patent has been introduced in evidence in two actions, one wherein the said John Magwire was plaintiff and vice-defendant in the St. Louis court of common pleas, and one wherein Edward M. West, claiming under said John Magwire, was plaintiff, and Joseph Cochran was defendant, in the circuit court of the United States for the eastern district of Missouri, yet the said patent of the Brazeau reservation remaining in the hands of said recorder of land titles for about six years, has been ordered by the Commissioner of the General Land Office to be returned to Washington, upon the false pretence that no one of the representatives of Brazeau would receive the same. Defendants aver, that said United States surv. of said respective confirmations are con

clusive evidence of the location of each of said tracts, and concludes both the plaintiff and defendants; that the confirmation of each of said tracts of Brazeau was subject to the condition of survey, and that each of said patents are conclusive evidence of the location of each tract embraced therein, in strict accordance with the confirmation, and is
19 binding upon the United States, the plaintiff, and all other persons. Defendants further aver, that plaintiff conveyed the whole of said Brazeau reservation, lying south of the said southern ditch of Labeaume, to Lewis V. Bogy, by deed, dated the 6th day of June, eighteen hundred and forty-*six*, which deed is herewith filed as an exhibit. Defendants aver that the location, as given by said surveys, No. 3,333 and 3,332, and the said patents, are the true and correct locations of said two tracts of land under the said confirmations. Defendants aver, that the pretended confirmation to Joseph Brazeau was wholly void, for want of jurisdiction in the board, and that no title for any land could pass to Brazeau thereunder, and that the patent vests the only title ever granted to him for Brazeau's representatives, or to his legal representatives, or to his legal representatives by the Government of the United States.

Defendants further aver that William Chambers, William Christy, and Thomas Wright, in eighteen hundred and sixteen, were innocent and bona fide purchasers for a full, fair, and valuable consideration of the said Labeaume tract, and the land included within the survey of Don Antonio Soulard, of 1799, which is identical with the United States survey No. 3,333; that they had no notice of the pretended claim of Brazeau for said sixteen arpents of land within the said Soulard survey, and the defendants are in like manner innocent bona fide purchasers and representatives of said Chambers, Christy, and Wright. And the defendants, and those under whom they claim, have been in the actual adverse and continuous possession of the premises sued for, for more than twenty years next before the commencement of this suit. Defendants further aver, that the plaintiff is barred and precluded from claiming or having the relief prayed for by reason of the great lapse of time since the alleged error in the location of the Brazeau reservation, and by the great lapse of time since the same was discovered by the plaintiff.

Defendents further aver that the title to the sixteen arpents front, by four arpents in depth, acquired by Labaume in 1789, under the deed of Joseph Brazeau to him, was a just title; that the said deed gave a title capable of transferring the property; that said Brazeau was then resident in the town of St. Louis, where said land was situate, and continued so to reside therein for more than ten years thereafter; that said Labeaume, immediately after the said deed was executed, dug the said ditches, and made the said embankments, and put pickets thereon, and thereby enclosed the premises in question sued for, and held the same as his own so inclosed, and lived thereon for more than ten years successively, prior to the first day of January, 1816, whereby said Labaume acquired all right, title and estate of said Brazeau, by the Spanish law of prescription, then in force in the Territory of Missouri and the Territory of Upper Louisiana; and these defendants deny all confederacy and all combination for the purpose of keeping plaintiff out of possession, or for any purpose; and these defendants deny having hindered or prevented the plaintiff from having possession, using, and enjoying the said land in any manner, otherwise than they would hinder any
20 person, without any right or title, from taking possession of their property, of which they and those under whom they claim to have been possessed for more than half a century.

Defendants further aver that, shortly after the said patent for the said Brazeau reservation, issued upon the survey No. 3,332, for Brazeau's representatives, the said patent was transmitted to the recorder of land titles of the United States, at the city of St. Louis, to be by him delivered to the legal representatives of said Brazeau; and the legal representatives of said Brazeau, thereupon, and shortly after the said patent arrived at the recorder's office in the city of St. Louis, caused a demand thereof to be made of the said recorder of land titles at his office in said city, but the said recorder tyrannically and illegally refused to deliver the same to the said representatives of Brazeau. And afterwards, in a certain hearing in the suit of Picot, trustee under the will of Ann Biddle against Page, Bogy, & Benoist, in the St. Louis court of common pleas, the said patent to Brazeau's representatives was introduced and given in evidence on the hearing of said cause, on the part and behalf of the said plaintiff, claiming as a representative of said Brazeau, under the said patent to Brazeau and his legal representatives. And in the said cause on error to the said court of common pleas in supreme court of Missouri, it was held by the said court that the plaintiff was the legal representative of said Brazeau, all of which will more fully appear by the record in said cause, which defendants will produce if required.

And defendants further aver that the plaintiff, John Maguire, on the twenty-second day of August, eighteen hundred and fifty-five, filed in the office of the clerk of the St. Louis land court a former or other petition against Mary L. Tyler, William C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie J. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas I. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith, and Virginia M., his wife, Susan P. Chirsty, George W. Good, and Fannie S. M. Good, his wife, David D. Mitchell, Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton, and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow, and Mary H., his wife, Theodore P. Green, and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright, and John C. Wickham, trustees for Martha A. Wills, Alfred Dryden, and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, Geo. W. Sparrowhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. Boomer, Benjamin Vice, Louise R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Luckland, Oleana Schaumburgh, George Case, George T. Hardcastle, and Adelade, his wife, defendants, in
21 which former petition the plaintiff stated in substance the same matter now stated in his petition in this cause, excepting only the averment of the United States survey of 26th May, 1862, and the patent of 10th of June, 1862, to Brazeau and his legal representatives; and the prayer of plaintiff's former petition was that this court divest, by its judgment and decree, out of the defendants, the title to the Brazeau reservation of the said same identical sixteen arpents of land, claimed by plaintiff in this cause, and to vest the title thereto in the plaintiff. The defendants in said former suit answered said former petition in substance, as these defendants have answered the petition in this cause, as to all the averments, excepting those concerning the survey and patent in 1862, and upon the said issues of facts made in said former

clusive evidence of the location of each of said tracts, and concludes both the plaintiff and defendants; that the confirmation of each of said tracts of Brazeau was subject to the condition of survey, and that each of said patents are conclusive evidence of the location of each tract embraced therein, in strict accordance with the confirmation, and is
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21 which former petition the plaintiff stated in substance the same matter now stated in his petition in this cause, excepting only the averment of the United States survey of 26th May, 1862, and the patent of 10th of June, 1862, to Brazeau and his legal representatives; and the prayer of plaintiff's former petition was that this court divest, by its judgment and decree, out of the defendants, the title to the Brazeau reservation of the said same identical sixteen arpents of land, claimed by plaintiff in this cause, and to vest the title thereto in the plaintiff. The defendants in said former suit answered said former petition in substance, as these defendants have answered the petition in this cause, as to all the averments, excepting those concerning the survey and patent in 1862, and upon the said issues of facts made in said former

cause in said St. Louis land court, that cause was submitted to the court upon the amended petition, answer thereto, evidence of proof adduced; and on the 22nd day of June, 1858, at the March term of said St. Louis land court, the following finding and judgment was rendered and filed in the said former cause by the Honorable Charles B. Lord, judge of said court.

That, on the fifth day of October, seventeen hundred and ninety-three, the Spanish government conceded or granted to one Esther, a free mulatress, a tract or parcel of land situate on the border of the Mississippi River, and between that and the Earthen Barn, La Grange de Terre, as stated in plaintiff's petition. The concession to Esther had no definite location by the terms of the grant, but she took possession under said grant, of a tract of land lying between the Big Mound and the Mississippi River. That, on the twenty-fifth day of June, 1794, the said Spanish government conceded or granted to one Joseph Brazeau a parcel of land of four arpents in front by twenty arpents in depth, as described and bounded, as stated in plaintiff's petition. That the said Brazeau took possession of the said tract or parcel of land as granted by said government, about the time of said concession. That afterwards, on the ninth day of May, in the year seventeen hundred ninety-eight, the said Joseph Brazeau, by his deed of that date, sold and conveyed the said tract or parcel of land conceded and granted to him as aforesaid, to one Louis Labeaume, excepting, however; and said Brazeau, in his said deed, reserved to himself four arpents of said tract of land "to be taken at the foot of the hillock in the southern part of said land;" that the said four arpents so reserved by said Brazeau, in his said deed to said Labeaume, are situate within the limits of the out boundary line of the village of St. Louis, run in conformity to the first section of the act of Congress, making further provision for set'ling the claims to land in Missouri Territory, approved June 13, 1811. That, after said sale and conveyance to Labeaume by Brazeau, but prior to the 15th day of February, in the year 1799, the said Louis Labeaume petitioned said Spanish government for a grant of 360 arpents of land, including that which he had acquired of said Brazeau, that is to say, twenty arpents in depth from the Mississippi River, ascending Rocky Branch, west quarter south, by sixteen arpents front along the Mississippi, to be taken from the descent of the road into the creek, as stated in plaintiff's petition; that said Spanish government caused the land petitioned for as aforesaid, by said Labeaume, to be surveyed by one Antonio Soulard, acting surveyor under the said government at the time stated in the plaintiff's petition; which said survey does not embrace any portion of the land reserved by Joseph Brazeau, in said deed to Labeaume, dated the 9th day of May, 1798. That the board of commissioners for the adjustment of land titles in the Territory of Missouri, on the 22d day of September, in the year 1810, confirmed to said Joseph Brazeau the said four arpents.

That the said commissioners, on the fourteenth day of June, in the year 1811, issued their certificate of confirmation, No. 983, as stated in the plaintiff's petition. That the said Joseph Brazeau and his wife, on the 26th day of June, in the year 1816, by their deed of that date, conveyed all their right, title, and interest in said four by four arpents of the land to one Pierre Chouteau, which deed was duly recorded as stated in plaintiff's petition.

That, in the month of November, in the year 1817, by authority of the United States, and under the direction of the surveyor general for the district of Illinois and Missouri, the said four by four arpents of land

were surveyed by Joseph C. Brown, of which the following is a copy: No. 982 & 983; township No. 45 north, range No. 47 E. of 5th principal meridian, surveyed for Louis Labeaume, two tracts in one; the one confirmed in his own name for 356 arpents, the other under Joseph Brazeau, for four arpents, together 360 arpents, equal to 306¼ acres; beginning at the mouth of the branch, the S. E. corner of Eastin's tract; thence down the Mississippi, bending therewith, S. 24 deg. E. 12 chains; S. 33 deg. E. 14 chains; S. 35 deg. E. 13 chains; S. 27 deg. E. 8 chains; S. 25 deg. E. 13 chains; S. 24 deg. E. 15 50, a stone at the mouth of an old ditch, the lower corner on the river; thence S. 74½, W. 11 chains 50 links, intersected the line of the common fields 63 chains 50 links, a stone the southwest corner of the tract; thence N. 15½, W. 10 chains 20 links to the branch where the road crosses; thence meandering down the same N. 50 deg. E. 2 chains 50 links; N. 25 deg. W. 5 chains 70 links; E. 2 deg. N. 6 deg. N. 70 deg. E. 3 chains 70 links; N 2 chains 86 links; W. 3 chains 50 links; N. 25 chains; E. 4 links; N. 60 E. 1 chain 50 links; N. 36 deg. E. 2 chains 50 links; N. 80 deg. E. 2 chains 50 links, the mouth of the branch at the beginning, (signed,) Joseph C. Brown, D. S., Nov., 1817.

That, on the first day of June, in the year 1826, Pierre Chouteau & wife, by their deed of that date, conveyed the said four by four arpents to one George F. Strother, which deed was duly recorded as stated in the plaintiff's petition. That said Geo. F. Strother & his wife, on the third day of September, in the year 1830, by their deed of that date conveyed the said four by four arpents of land, with other tracts of land, to John Mullanphy and John O'Fallon, in trust for the sole of & behoof of the Marine Railway Company. That, in the month of Novem-
23 ber, in the year 1840, the said George F. Strother departed this life, and administration in due form of law was had on his estate; and in like due course of law, all the right, title, interest and estate of the estate of said Strother, in and to said four by four arpents of land, were sold by the administrator of said estate and conveyed to the plaintiff. That, on the 2nd day of January, in the year 1852, John O'Fallon, (the said John Mullanphy having before that departed this life,) by authority and direction of said Marine Railway Company, conveyed by deed all their right, title, and interest of said Marine Railway Company to the plaintiff, in the land north of the ditch, called Labeaume's ditch. That the said tract of four by four arpents of land which was confirmed to said Joseph Brazeau, is situate in the northern part of the present city of St. Louis, and county of St. Louis, on the south side of an old ditch, called and known as Labeaume's south ditch. That the said Pierre Chouteau, under whom plaintiff claims title to the land in question, on the fifteenth day of October, 1799, petitioned for a tract of land between Roy & Labeaume, of the width of six arpents. That Labeaume's ditches were then made; that Chouteau, in his petition, called for the line of Louis Labeaume's land for his northern boundary; that at this time Joseph Brazeau had promised to convey the four by four arpents to said Pierre Chouteau.

That, at the time of the survey made in 1803, the south ditch of Labeaume was recognized by all the adjoining proprietors as Labeaume's south line, and that possession was claimed and held with such recognition, from the time of said survey in 1803, until about 1823. That all of the defendants respectively claim title, and the right to possess the part and parts which they do respectively possess and claim of said tract of four by four arpents of land, under one Louis Labeaume, or his legal representatives; and that the defendants do hold, claim and pos-

sess portions of said tract of four by four arpents in the manner and to the extent stated in plaintiff's petition. And that the said tract of four by four arpents of land at the time of the confirmation thereof to said Joseph Brazeau, as aforesaid, was not definitely located by the metes and bounds. That on the tenth of September, eighteen hundred and ten, Jacque Clamorgan, who claimed the Esther grant, by deed from her, the 2nd of September, 1797, conveyed the same grant to Pierre Chouteau; and from the evidence, aforesaid, the court further finds that said Labeaume, in February, in the year 1806, filed his claim for confirmation before the said board of commissioners for the adjustment of land titles for the territory of Missouri, and said board of commissioners confirmed to him three hundred and fifty-six arpents; and to Joseph Brazeau four arpents as stated in defendant's answer. The said Labeaume made the ditches and enclosures mentioned in defendant's answer.

That, under the said confirmation to said Labeaume, a survey of the tract of land so confirmed was ordered by the Secretary of the Department of the Interior of the United States Government, and in the year 1852, a survey thereof was made under and in pursuance of the
24 instructions of said secretary, and which survey was afterwards approved on the twenty-sixth day of February, in the year 1852; and thereupon a patent certificate was issued by the recorder of land titles, certifying to the effect that Louis Labeaume, or his legal representatives, was entitled to a patent under said confirmation and survey for 339 68-100 acres—equal to 339 30-100 arpents.

That afterwards, and on the twenty-fifth day of March, in the year 1852, a patent was issued by the Government of the United States, granting said tract of land described in the last-mentioned survey to Labeaume or his legal representatives, and his or their heirs and assigns, saving and reserving however any valid adverse rights which may exist to any part thereof.

That, when said last mentioned survey was made, and also when said patent was issued as aforesaid, to said Labeaume or his legal representatives, the defendants had knowledge that the plaintiff claimed to be the legal representatives of said Joseph Brazeau, under and in virtue of the deeds and conveyances, and the documents and proceedings set out in the plaintiff's petition. And that he claimed to have and to hold the equitable title to said four by four arpents reserved by said Brazeau in his said deed to said Labeaume. The court further finds that there is no evidence that survey No. 3,333, for Louis Labeaume or his legal representatives, or the patent thereon, were obtained by any fraud whatever. That the United States survey No. 3,332, for Joseph Brazeau's legal representatives, was made and a patent was issued thereon in 1852, as alleged in the answer of the defendants, for the Brazeau reservation, and that said survey and patent do not embrace any land lying north of said south ditch of Labeaume. That the conveyance made by Labeaume and Chambers, in eighteen hundred and sixteen, through whom the defendants claim title, was made upon good and valuable consideration, and without any notice of the equities now set up by the plaintiff. That said Louis Labeaume, and those claiming under him, have had possession of, and have used, occupied, and enjoyed the premises in controversy, from about seventeen hundred and ninety eight to the time of the commencement of this suit. The court decides upon the foregoing facts, that the plaintiff is not entitled to the relief sought for by his bill, and that said petition should be dismissed at the cost of the plaintiff.

C. B. LORD.

Upon the finding as aforesaid, it was ordered and adjudged by the court, that the plaintiff take nothing by this suit in this behalf, but that the defendants go hence without day, and recover of said plaintiff their costs and charges herein expended, and have execution therefor. And the plaintiff filed his motion for a review of said finding, which was overruled by said court, and thereupon the plaintiff took an appeal to the supreme court of Missouri, where the said judgment and decree of the St. Louis land court was affirmed, and the plaintiff thereupon took a writ of error from the supreme court of Missouri to the Supreme
25 Court of the United States, where the said judgment and decree of the said St. Louis land court was finally affirmed and held valid and binding forever.

And the said judgment and decree of the said St. Louis land court, in said former cause, was upon the merits in favor of the defendants in said former cause on all the material issues in said former cause; and said judgment and decree and finding of facts on the issues remains in full force, not reversed, reviewed, reheard, or otherwise vacated; and the same is binding and conclusive upon the parties thereto, and all persons claiming under them as to all the facts found, and the judgment and decree thereon forever. And the said defendants in this suit, wherever they are not identical with the defendants in the former suit, claim under the same title of Louis Labeaume and the said defendants, in the former suit; and these defendants refer to said former suit and the record thereof, in this same St. Louis land court, wherein all the matters and issues and facts found by the court, and the judgments and decrees thereon, will more fully and at large appear, and all the records of said former cause is made a part of this answer by reference thereto.

And these defendants aver that the said former suit, trial, finding of the issues and judgment and decree thereon by the St. Louis land court, is final and conclusive as to the title to said sixteen arpents of land claimed by the plaintiff in said former suit, and in this pending suit, to lie within the Labeaume patent, in the southwest corner thereof; and bars and precludes the plaintiff from having and maintaining this pending suit, and from claiming the Brazeau reservation to be within Labeaume's patent, for the same identical cause of action, and the same substantial prayer for relief as in the said former suit. And these defendants aver that the said first patent to Joseph Brazeau and his legal representatives was issued on the twenty-fifth day of March, eighteen hundred and fifty-two, and was duly executed by the President of the United States and the recorder of the General Land Office, according to the acts of Congress, and the same was duly recorded.

And these defendants further aver that the said patent so issued was given in evidence in the said trial and hearing of the said former cause, as the source of title, and also in said other trials in Magwire vs. Vice, and West vs. Cochran & Picot, trustee, vs. Page, Bogy & Benoist.

And these defendants aver that the said patent of eighteen hundred and fifty-two, to Brazeau, was valid and effectual to pass and did pass the title to the said Brazeau and his legal representatives, for said sixteen arpents of land described in the Brazeau patent, and lying south of the southern line of said Labeaume patent, and that the Secretary of the Interior, in eighteen hundred and sixty-two, had no power or authority to vacate said patent to Brazeau, and that the same is still valid and effectual to all intents and purpose.

And defendants further aver that the United States survey and

patent to Brazeau, in eighteen hundred and sixty-two, are null and void, and vest no title whatever in plaintiff, by, of the previous issue of the said patent to Brazeau and his legal representatives, in eighteen hundred and fifty-two, for another tract of land.

26 Defendants aver that the said Secretary of the Interior had no power or authority to order the making of a new survey or the issue of said new patent in 1862, to Brazeau, and that all the acts of all the officers of the United States in regard to said survey and patent of eighteen hundred and sixty-two are tyrannical and unlawful, and are null and void, and vest no right, claim or equity, in the plaintiff, in or to the land embraced in said patent of 1862. And these defendants, as to each averment in plaintiff's petition in any manner in conflict with any allegation in this answer, say that they deny such averment. And as to each of said instruments of writing referred to or mentioned in this answer, which are not made exhibits in the plaintiff's petition, these defendants are ready and offer to produce and show them to the court, to wit: all the originals within their control and certified copies of all others, whenever and wherever this court shall direct. And these defendants having fully answered, ask for judgment and their costs.

BRITTON A. HILL,
Sol'r for Def'ts.

A. BURWELL, *of Counsel.*

COUNTY OF ST. LOUIS, *ss:*

Thomas L. Sturgeon, for himself and for the other defendants in this cause, being duly sworn, says, that he believes the foregoing answer and the matters as stated therein are true.

THOS. L. STURGEON.

Sworn to and subscribed before me this sixth day of November, A. D. 1862.

As witness my hand and notorial seal this day.

[SEAL.] E. H. VORTRIEDE,
Notary Public for St. Louis County.

Petition to divest title, &c.

St. Louis land court, October term, 1862.

JOHN MAGWIRE, pl'ff,
vs.
MARY L. TYLER and other defendants.

In the above-entitled cause, the answer of the defendants may be sworn to by any one of the defendants for all of them.

St. Louis, Nov. 3d, 1862.

S. T. GLOVER,
One of Counsel for Pl'ff.
JOHN M. KRUM,
One of Pl'ff Counsel.

27 And afterwards, on the fifteenth day of October, 1862, the following further proceeding' were had, to wit:

Change of venue.

Now, at this day, there is filed in this cause a petition for change of venue in this cause, and the same being submitted to the court, and

the court being advised of and concerning the premises, doth order, that the venue in this cause be changed according to law, to the St. Louis court of common pleas, which petition is in the words and figures following, to wit:

To the St. Louis land court:

The petition of John Magwire, the plaintiff, in the above-entitled cause, stated that he has good reason to believe and does believe that the judge of the St. Louis land court is prejudiced against the plaintiff in said cause, so that he believes he cannot have a fair and impartial trial in said cause. The plaintiff further states that he has good reason to believe, and does believe, that William C. Tyler, one of the defendants, has an undue influence over the mind of the judge of the St. Louis land court, so that the plaintiff believes that he cannot have a fair and impartial trial in said cause. The plaintiff therefore asks for a change of venue in said cause.

JOHN MAGWIRE.

ST. LOUIS COUNTY, *ss:*

John Magwire, the petitioner named in and who signed the foregoing petition, being duly sworn, says that his said petition and the matters therein as stated, he believes to be true, and he further states that he has good reason to believe that he cannot have a fair trial in the above-entitled suit, by reason and on account of the causes set forth in his said petition.

JOHN MAGWIRE.

Sworn to and subscribed before me this 2*th* day of December, 1862.

ROBERT WHITE, *Clerk.*
By E. P. WALSH, *D. C.*

Appointment of Silas Bent as guardian ad litem.

And afterwards, at the November term, 1862, of the St. Louis court of common pleas, within and for the county aforesaid, the following further proceeding' were had, to wit:

TUESDAY, *December* 16*th*, 1862.

Upon the written request of Emma Tyler, a minor defendant over the age of fourteen years, this day filed, the court doth appoint Silas Bent guardian ad litem for the said defendant, and the said Silas Bent files his consent to act as such guardian ad litem.

And afterwards, at the April term, 1864, the following further proceedings were had, to wit:

Appointment of M. Brotherton and James R. Lackland.

SATURDAY, *May* 28*th*, 1864.

On motion, it is ordered by the court that Marshall Brotherton,
28 esq., be appointed guardian ad litem for the said defendant, Laura W. Brown, and James R. Lackland is appointed guardian ad litem for Mary E. Gordon, and they answer herein. Emma Tyler and her guardian, Silas Bent, files an answer herein.

Seperate answer of Emma Tyler.

The answer of Emma Tyler, by her guardian, is in the words and figures following to wit:

The said defendant, Emma Tyler, minor under the age of twenty-one years, by Silas Bent, her guardian, for answer to the petition in this case says, that she has no knowledge or information sufficient to form a belief of the truth of the allegations in plaintiff's petition contained, and the said defendant adopts the answer filed in the case by her mother, Mary L. Tyler, and others filed in this cause.

SILAS BENT,
Guardian.
By B. A. HILL,
His Attorney.

Affidavit waived.

KRUM, DECKER & GLOVER,
For Plaint'ff.

Separate answer of L. W. Brown & M. E. Gordon.

MAY 28TH, 1864.

And the answer of Laura W. Brown and Mary E. Gordon, filed on the twenty-eighth day of May, 1864, is in the words and figures following:

St. Louis court of common pleas, November term, 1862.

JOHN MAGWIRE
vs.
MARY L. TYLER *et al.* } No. 462.

Now, at this day, comes Laura W. Brown, by her guardian, Marshall Brotherton, and Mary E. Gordon, by her curator, James R. Lackland, both of whom are minors under the age of twenty-one years, and for their joint and several answers, state that they and neither of them have any knowledge or information sufficient to form a belief as to any of the matters, things or allegations contained in the plaintiff's petition, and therefore they deny each and every allegation contained in plaintiff's petition, and ask that the court protect their rights as minor defendants.

LAURA W. BROWN,
By her guardian, MARSHALL BROTHERTON.
MARY E. GORDON,
By her curator, JAMES R. LACKLAND.
LACKLAND, CLINE & JAMISON,
Att'ys for Defendants.

Affidavit waived. May 28th, 1854.
GLOVER, KRUM & DECKER,
For Pl'ff.

29 *Decree.*

And afterwards, on Saturday, May 31*th*, 1864, the following further proceedings were had, to wit:

JOHN MAGWIRE
vs.
MARY L. TYLER, WILLIAM C. TYLER, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie E. S. Tyler, Robt. Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Marshall Brotherton, John R. Shepley, Edward D. Hobbs, Alfred Dryden, Margaret Dryden, Elizabeth Gordon, Minerva Gordon, Mary Gordon, by James R. Lackland, her guardian ad litem, Franklin A. Dick, Louise R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, by Marshall Brotherton, her guardian ad litem, Mary A. Lakenan, James R. Lackland, Henry S. Parker, James Parker, Wm. E. Shepherd, Catherine Shoffey, Barnett Orrick, John Russel, Mary Vice, Nelly Delany, Rebecca Dodd, Joseph Dennis, Frederick Schulenburg and Adolph Boeckler.

Now, at this day, comes the plaintiff, by his solicitors, and also the defendants. The adult defendants, by their solicitors, and the infant defendants, by their guardians; and this cause having been heretofore submitted to the court, for a decision upon the plaintiff's petition, and the answers of all the defendants, and the exhibits and other evidence in the cause, and mature consideration being had thereon, the court finds that out of the claim presented to the board of commissioners, by Labeaume, the four by four arpents claimed by plaintiff was confirmed to Joseph Brazeau or his legal representatives; and the court finds the issues in the cause for the plaintiff, and therefor, it is ordered adjudged, and decreed that the tract of land claimed by the plaintiff, and meted and bounded as follows, viz: Beginning at a point on the right bank of the Mississippi River; the northeast corner of survey No. three thousand three hundred and forty-two, in the name of Esther, free mulatress, or her legal representatives, and the southeast corner of Louis Labeaume's survey number three thousand three hundred and thirty-three; thence south seventy-four (74) degrees thirty (30) minutes west, with the southern boundary of said Labeaume's survey, and the northern boundary of the said Est'er survey, to the northwest corner of the said Esther survey; thence north twenty-three (23) degrees west, seven hundred and seventy-six (776) feet eight (8) inches to a stone; thence north (74°) seventy four degrees (30) thirty minutes east, (776) seven hundred and seventy-six feet eight inches, to a point on the right bank of the Mississippi River; thence down and along the right bank of said river to the beginning; be and the same is hereby decreed to the plaintiff, and all the right title and interest of each and every one of said defendants, in and to said tract of land, is hereby divested out of said defendants, and each of them is vested in and passed to plaintiff; to have and to hold to said plaintiff, his heirs and assigns, the said tract of land so passed to the plaintiff, his heirs and assigns forever, is the same which is covered by United States survey, No. (3,343) thirty-three hundred and forty-three, approved May 8th, eighteen

hundred and sixty-two, and patented to Joseph Brazeau or his legal representatives, June tenth, eighteen hundred and sixty-two; and it is further ordered, adjudged, and decreed that the plaintiff do have and recover of the defendants, respectively, the rents and profits accrued during their respective possessions; and for as much as the court is not advised what is the amount, and other particulars thereof, Alexander Martin is appointed commissioner of this court, to take an account thereof, and to report the same to this court together with the evidence in relation thereto.

And afterwards, on Monday, June 6th, 1864, the following further proceedings were had, to wit:

The court having duly heard and considered the motion of said defendants for a new trial of this cause, and being thereof sufficiently advised, doth order that said motion be overruled.

Separate answer of Fannie S. and Roberta Tyler.

On the 9th day of April, 1864, the following answer of Fannie S. and Roberta Tyler was filed, to wit: In this case the defendants, Fannie S. Tyler and Roberta Tyler, minors, within the age of twenty-one years, by Silas Bent, their guardian, come now here by their guardian, and for answer to plaintiff's petition, say they have no knowledge or information sufficient to form a belief of the truth of any of the allegations in plaintiff's petition, and these defendants adopt the answer filed in this case by their mother, Mary L. Tyler and others, and the said answer is, by consent of parties, to be taken as the answer of the said defendants, minors. And these defendants ask for judgment and their costs.

SILAS BENT, *Guardian.*

Oath waived.

APRIL 9, 1864.

I consent, as attorney of the plaintiff, that the answer of Mary L. Tyler and others, heretofore filed in this case, may be taken as
31 the answer of the said minor defendants, Fannie S. and Roberta Tyler, and filed nunc pro tunc, and oath waived to this.

KRUM & DECKER & S. T. GLOVER,
Att'ys for Pl'ff.

And on the sixth day of June, 1864, the following bill of exceptions was filed, to wit:

Bill of exceptions.

Be it remembered that, on the trial of this cause, the following are all the proceedings, evidence and testimony offered, given, and had before the court, the Honorable Samuel Reber, judge, trying the cause without a jury.

The plantiff read in evidence to the court the following evidence, papers, plats, and documents, and deeds, and testimony, to wit:

1st. Petition of Esther, a mulatress, dated October 2d, 1793, to Don Zenon Tradeau, and plat; the declaration and certificate of Tradeau, lieutenant governor, dated October 3d, 1793; the concession to Esther by Don Zenon Tradeau, dated October 5th, 1793, which petition is as follows, to wit:

Petition of Esther.

To Don Zenon Tradeau, &c., humbly sup'licates the undersigned Esther, free mulatto woman, residing in the town of St. Louis, and has the honor to observe you that she would wish to obtain in the northern part of this town a tract of land situate on the boarders of the Mississippi River, bounded on three sides by the domain of His Majesty, and on the other by the shore of the Mississippi, the northern part of which present-requested grant to be situate between the Earth Barn La Grange de Terre and the bluff of the Mississippi, having on such end four arpents, running about from the east-northeast, to the west-southwest, and extending twenty arpents nearly, running from the east, north-northwest, to the south-southwest, so that your memor'alist might hold it in fee-simple for herself, her heirs, and assigns, for the purpose of mowing hay, grazing her cattle, and doing with the same anything else suitable to her interests, and your memor'alist will ever pray, &c.

(Signed) + ESTHER.

ST. LOUIS, *October 2d*, 1793.

MAGUIRE *vs.* TYLER } No. 129.

[Here follows map marked page 31.]

Certificate, &c., of Tradeau.

The declaration and certificate of Tradeau, lieut. governor, dated October 3d, 1793, is as follows, to wit:

We, lieutenant governor, after having ascertained that the land
32 petitioned for belongs to the domain of His Majesty, and that it interferes with the claims of nobody. I certify to have put the said Esther, free mulatto woman, in possession of the portion of land designated in her request; having four arpents in front, running about from east-northeast to west-southwest, on twenty arpents, and running about from the north-northwest to the south-southeast, situate in that portion of this town between the mound called La Grange de Terre and the boarders of the Mississippi, three sides of which requested land are bounded by the domain of His Majesty on the other side, that is, on the part of the east-northeast, is bounded by the bluff of the Mississippi, as represented on the plat on the back hereof.

In witness whereof we have given these presents in the town of St. Louis this third day of October, seventeen hundred and ninety-three.

ZENON TRADEAU.

Concession to Esther.

The concession to Esther is as follows:

I, Don Zenon Tradeau, lieutenant governor of the western part of Illinois, in consequence of the application of Esther, a free mulatto woman, residing in this town of St. Louis, made by her request, having date the second instant, and after having put her in possession ourselves according to the decree of the following, we have granted, and do grant to the said Esther, and her heirs and assigns, or any other that might represent her rights, the portion of land above mentioned, having four arpents front on its two extremities, which will be nearly running from the east-northeast to the west-southwest, on twenty arpents, running

nearly from the north-northwest to the south-southeast, situate north of this town; then the northern portion of the present grant will be situated between the mound called La Grange de Terre and the boarders of the Mississippi on going down the said river, to the complement and extension of the aforesaid twenty arpents in depth; the north-northwest, south-southeast, and west-southwest, which are about the directions of the lines, shall be bounded by the domain of His Majesty, and the side of the east-northeast, which is the side next the river, shall be bounded by its bluff, so that the said Esther may upon it mow the hay she shall be in want of, graze her cattle, and do with the same whatever use she may think best for her interests, subject, however, to the law, charges, and impositions which His Majesty may think proper to impose hereafter on the same.

Given in the town of St. Louis, Illinois, the fifth day of October, one thousand seven hundred and ninety-three.

ZENON TRADEAU.

2d petition of Joseph Brezeau to said Don Zenon Trudeau of the first day of June, 1784, declaration and certificate of lieutenant governor Zenon Tradeau, dated June 10, 1794, and concession to Joseph Brazeau, dated June 25, 1794, as follows:

33 *Petition of Joseph Brazeau.*

Petition of Joseph Brazeau is as follows:

To Mr. Zenon Trudeau, captain of the stationary regiment of Louisiana, lieutenant governor and commander-in-chief of the western part of Illinois, Joseph Brazeau, a citizen of this post of St. Louis, hereby sup'licates, and has the honor to represent that he wishes to obtain in the western part of this town a tract of land situate beyond the foot of the mound called the La Grange de Terre, of four arpents in width, which are to extend from the steep bank of, or beach (ecore) of the Mississippi River, in the west quarter, southwest by about twenty arpents in depth, that shall begin at the foot of the hill on which stands the said Grange de Terre, ascending in a northwest course to the environs of Stony Creek, so that the said tract hereby asked for be bounded on the east side by the bank of the Mississippi, and on the other sides in part by the King's domain, and in part by lands reunited to said domain, on which lands now lies the present concession, in order that the petitioner may cut hay on it for his cattle, and sow it with grain, and the petitioner shall never cease to be thankful for your goodness.

St. Louis, June, 1794.

(Signed) JOSEPH BRAZEAU.

Certificate of Trudeau.

The declaration and certificate of Trudeau, lieut. governor, dated June 10th, 1794, are as follows:

We, lieutenant governor and commander-in-chief of the western part of Illinois, after having ascertained that the land asked for belongs to the domain of His Majesty, and on account of the abandonment which the ancient owners have made of it, and the other part not having ever been conceded, and that the whole is not prejudicial to anybody, do certify to have put Joseph Brazeau in possession of the parcel of land designated in his petition, of four arpents front by twenty arpents deep, which shall extend in a north-northwest course from the foot of the hill where

stands the Grange de Terre, ascending to the vicinity of the Rouisseau de Pierre (Stony Creek,) bounded on one side by the bank of the Mississippi, and on the opposite side by lands not conceded or reunited to His Majesty's domain, and at the two ends bounded on the north-northwest, by the vicinity of Rocky Creek, and the other in the south-southeast, shall be bounded by land granted to the free mulatress named Esther; and in order to certify the same, we have delivered these presents to serve, in the town of St. Louis, of Illinois, this tenth of June, of the year 1794.

(Signed) ZENON TRUDEAU.

34 And the concession to Joseph Brazeau is in the words & figures following, to wit:

Concession to Jos. Brazeau.

I, Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lieutenant governor and commander-in-chief of the western division of Illinois, in consequence of the demand made by Joseph Brazeau, residing in this town of St. Louis, in his petition dated the first of this month, & after I had put him possession according to the decree I have drawn here above on the tenth of the same month, have conceded & I do concede to the said Joseph Brazeau in fee simple, for him, his heirs, assigns, or whosoever may represent his rights, a tract of land hereabove designated, of four arpents front, by twenty arpents deep, situate north of this town, which (twenty arpents) shall begin beyond the mound called La Grange de Terre, extending north-northwest, to the environs of Rocky Branch; bounded on one side by the bank of the Mississippi River, & on the opposite side by lands reunited to the King's domain, through which land passes the present concession, of which one end is to be bounded by the concession of the free mulatress named Esther, in order that the said Brazeau may cut on it the hay wanted for his cattle, or sow it with grain; said concession remaining liable to all the changes, laws, & impositions which it shall please His Majesty to impose in future.

Given in the town of St. Louis, this twenty-fifth of June, in the year 1794.

(Signed) ZENON TRUDEAU.

3d. A deed from Joseph Brazeau to Louis Labeaume, dated May 9th, 1798, as follows:

Deed of Brazeau to Labeaume.

The year seventeen hundred & ninety-eight, the ninth of the month of May, before us, Don Zenon Trudeau, lieutenant governor, commander-in-chief, civil & military, of Upper Louisiana, was present Joseph Brazeau, inhabitant of this town, who, by these presents, acknowledges to have sold, ceded, relinquished, & transferred to Mr. Louis Labeaume, also inhabitant of this town, a concession of land to him given, the twenty-first day of the month of June, of the year 1794, such as the said concession purports to be, & without any warranty. The said Joseph Brazeau not wishing to be responsible at all for said land, although he has fulfilled the obligations imposed by the laws of the government, in order to acquire the right of domain & of property, yielding & abandoning to the said Mr. Labeaume, the purchaser, for him, *his* or his

assigns, all his rights, actions, possessions, & property, for the price and sum of forty dollars, which the said Mr. Labeaume has paid him in cash, & for which sum the said Joseph Brazeau gives him a full discharge;
35 the said Mr. Labeaume remaining content and satisfied with the said concession, consisting of four arpents of land to be taken from the foot of the "elevation or hillock commonly called the Grange deTerre," by twenty arpents in depth, bounded by the Rousseau de Pierre (Rocky Creek,) at the extremity opposite to the said hillock, bounded east by the Mississippi River, & west by the land belonging to the royal domain; the said Mr. Brazeau reserving to himself four arpents of land to be taken at the foot of the hillock, in the southern part of said land, for him (the said Mr. Brazeau) to do as he shall please with them, to sell, cede, or alien, as well for him or assigns, only selling to this effect sixteen arpents in depth to said Mr. Labeaume, who accepts the said sale on the terms & conditions above mentioned, remaining & accepting. The parties have signed in the presence of Don Zenon Trudeau, lieutenant governor, and of Messrs. Antoine Dubrail & Gregoire Sarpy, witnesses of assistance.

Done and passed at St. Louis, of Illinois, the day and year above written.

BRAZEAU.
L. LABEAUME.

GR. SARPY.
ANT. DUBRAIL.

4th. Petition of Louis Labeaume to said Trudeau, without date. Order of survey for Louis Labeaume, by said Zenon Trudeau, dated 15th February, 1799. Survey by Antoine Soulard, dated April 10th, 1799, & plat & certificate of Soulard, & also the certificate of Trudeau of the sale by Brazeau to Labeaume of 12th May, 1799, as follows:

Petition of Louis Labeaume.

To Don Zenon Trudeau, lieutenant governor & civil & military commander-in-chief of Upper Louisiana:

SIR: Louis Labeaume, with all due respect, has the honor to represent to you that he has acquired from Joseph Brazeau, a resident of this town, a parcel of land, conceded to him on the 20th of the month of June, 1794. This tract having but a very limited depth, & the petitioner having nearly put the whole in cultivation, besides the necessity for him to make establishments for the maintenance (manutention) of the manufac tures which he has proposed to you, asks that you be pleased to grant to him 360 arpents of land, including that which the petitioner acquired from Brazeau; that is to say, twenty arpents in depth from the Mississippi, ascending Rocky Branch, west quarter south by sixteen arpents, front along the Mississippi, to be taken from the descent of the road into the creek, which is the same front of the petitioner's land. The angle made by the perpendicular line from the road to the river, by the creek and by the river, will about complete the (quantity) of land
36 **asked for by the petitioner, who has the honor to observe to you that this land is entirely barren of wood, and can serve but as a pasture wanted by the petitioner for the maintenance of the cattle he is obliged to keep for his establishment.**

(Signed.) LOUIS LABEAUME.

The order of survey is in the words and figures following, to wit:

Order of survey for Louis Labeaume.

ST. LOUIS, 15*th of February*, 1799.

Whereas it is evident that the land solicited is totally deprived of timber and wood, is hilly, broken by ravines, and unfit for cultivation, and can serve only for the pasturing of cattle necessary for the use of the mill which is contemplated, I inform the governor general that the concession asked for will prove useful to the interested, as likewise to this town, without being prejudicial to anybody: and considering these circumstances, the surveyor, Don Antonio Soulard, shall put the interested in possession, and make out his survey in *in* continuation, in order to serve to solicit from the governor general the title in form which he desires.

ZENON TRUDEAU.

Survey by A. Soulard of 10*th Ap'l*, 1799.

The survey by Ant. Soulard is as follows:

I, Antonio Soulard, surveyor particular of the establishment of the Upper Louisiana, do certify that on the second day of March, of the current year, in virtue of the foregoing decree from Don Zenon Tradeau, lieutenant governor of these settlements, I went on the land of Louis Labaume, to execute the survey of the same, conformably to his petition, for three hundred and seventy-four superficial arpents. Said survey was made in the presence of the proprietor, and of the adjoining neighbors, with the perch of the city of Paris, eighteen feet in length according to the custom adopted in this provence of Louisiana. This land is situate at three miles in the north of this town of St. Louis, bounded on the north side by the bank of Rocky Branch and the domain of His Majesty; on the south side by the lands of divers inhabitants; on the east by the river Mississippi, and on the west side by vacant lands of the royal domain; and in order that all that is above written may be available whenever needed, I give the present certificate, with the foregoing figurative plat, on which are designated the dimensions and the natural and artificial boundaries of said land.

In St. Louis, of Illinois, the tenth of April, 1799.

(Signed) ANTOINE SOULARD.
Act. Surveyor Particular.

37 *Plat of Labaume's survey.*

(Here follows map marked page 37.)

And the certificate of the sale of Joseph Brazeau to Louis Labeaume is as follows:

Certificate of sale by Brazeau to Labeaume.

I, Don Zenon Trudeau, lieutenant governor, commander-in-chief, civil and military, of Upper Louisiana, do certify that the above concession, except four arpents, have been sold, ceded, and transferred to Louis Labeaume, by deed, proven before us, the ninth of May, of this year, and deposited in the archives of this post.

In St. Louis, of Illinois, the twelfth of May, 1798.

(Signed) ZENON TRUDEAU.

5th. Proceedings before the board of commissioners for the adjustment of land titles in the Territory of Missouri, including the confirmations to Louis Labeaume and Joseph Brazeau, as follows: Claim of Louis Labeaume before recorder of land titles, filed in his office 26th February, 1806, and dated the same day; proceedings of board dated September 3rd, 1806; *com*firmation to Labeaume & Brazeau, September 22d, 1810; order of survey, June 14th, 1811; patent certificate to Joseph Brazeau, No. 983, dated June 14th, 1811, as follows:

Claim of Labeaume.—Filed 26th February, 1806.

Abstract from the best of lands claimed by Louis Labeaume, and of which the titles, concessions, plats, scales, and certificates of scales have been delivered by him to the recorder of land titles, in order that they be registered and recorded by him, according to the acts of Congress approved on the second day of March, of the year 1805. No. 2, Louis Labeaume, 374 arpents of land, conceded in part to Joseph Brazeau, the 20th of June, 1794, and the other part to Louis Labeaume, the 15th of February, 1799. Settled and cultivated since both these dates.

St. Louis, the 26th of February, 1806.

(Signed) LOUIS LABEAUME.

Proceedings of board of Sept. 3d, 1806.

SEPTEMBER *3rd*, 1806.

The board met pursuant to adjournment. Present, the Hon. John B. C. Lucas and James L. Donaldson, esq. (Rec. ecx. D. T. 1806.)—6.

The same, (Louis Labeaume,) claiming 374 arpents of land situate on the Mississippi, a distance of about two miles from the town of St. Louis, produced a concession duly registered, from Zenon Trudeau,
38 for four by twenty arpents, dated the 20th of June, 1794, and granted to one Joseph Brazeau; and another concession from said Zenon Trudeau to claimant, for the said 374 arpents, including the said 4 x 20 arpents, dated the 15th of February, 1799. A survey of the same, taken the 20th of March, and certified the tenth of April, 1799, together with a certificate f'om Zenon Trudeau of the sale of said four by twenty arpents by said Joseph Brazeau, reserving to himself four arpents in superficies, said certificate dated the 12th of May, 1798. Hyacinth St. Cirir, being duly sworn, says that the said Joseph Brazeau (obtained) the said tract of four by twenty arpents, and cultivated the same in the years 1794, 1795, and 1796; and having sold the same to claimant, he did, in the year 1797, put a tenant on the same, who actually cultivated it until the year 1799, when claimant moved on it; that he was then the head of a family, and did, prior to and on the first day of October, 1800, actually inhabit and cultivate the same, and has continued on it to this day. The claimant, abandoning his right to the aforesaid concession of four by twenty arpents, and claiming immediately under the record, to wit, that for three hundred and seventy-four.

The board reject the same, the said concession not being duly registered. The board adjourned till to-morrow, 9 o'clock a. m. (Book No. 1, pages 516, 517, & 519.)

The confirmation to Labeaume and Brazeau is in the words and figures following, to wit:

Confirmation to Labeaume and Brazeau.

FRIDAY, *September 22nd*, 1810.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Louis Labeaume, claiming 374 arpents of land, (see Book No. 1, page 517,) the board confirm to Louis Labeaume three hundred and fifty-six arpents, and four arpents to Joseph Brazeau, and order that the same be surveyed agreeably to concession from Zenon Trudeau to Louis Labeaume, and as respects the four arpents, agreeably to a reserve made in a sale from Joseph Brazeau to said Louis Labeaume. Recorded in Book C, page 339 of the recorder's office. Board adjourned till Wednesday next at 3 o'clock p. m. (See Book No. 4, pages 502, 505 and 508.)

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

FRIDAY, *June* 14, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners. Louis Labeaume, Book 4, 505. Survey at the expense of the United States. Cert. 982 and 983. John B. C. Lucas, Frederick Bates, and Clement B. Penrose. (See Book No. 5, pages 183, 184, and 185.)

39 *Patent certificate of Jos. Brazeau.*

Louisiana Commissioner's certificate, No. 983, June 14, 1811.

We, the undersigned commissioners for ascertaining and adjusting the title and claims to land in the Territory of Louisiana, have decided that Joseph Brazeau, original claimant, is entitled to a patent under the provisions of the fourth section of an act of Congress of the United States, "An act respecting claims to lands in the Territories of Orleans and Louisiana," passed the third day of March, one thousand eight hundred and seven, for four arpents of land situate in the district of St. Louis, on the Mississippi, and order that the same be surveyed agreeably to a reserve made in a sale of Joseph Brazeau to Louis Labeaume, recorded in Book C, page three hundred and thirty-nine, of the recorder's office, by virtue of a concession or order of survey from Zenon Trudeau, lieutenant governor.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

6th. Deed from Joseph Brazeau to Pierre Chouteau, July 26, 1816, which is in the words and figures following, to wit:

Deed from Brazeau to Chouteau.

Whereas, Joseph Brazeau, by deed, passed before Don Zenon Trudeau, lieutenant governor, &c., under date of the 9th day of May, 1798, the original of which is deposited in the archives of this county register, No. 2, folio 51 and 52, sold, ceded and transferred to Louis Labeaume, a concession of land granted to me 21st of June, 1794, which concession consists of four arpents of land, to be taken from the foot of

the hill or mound commonly called La Grange de Terre, by twenty arpents in depth, bounded by the Rocky Branch on the extremity opposite said mound, bounded on the east by the Mississippi, and the west by the land belonging to the domain of the King, reserving to myself four arpents of land to be taken at the foot of the said mound in the southern part of the aforesaid tract, selling for that purpose only a depth of sixteen arpents to said Louis Labeaume, who accepts the said deed under the terms and conditions therein mentioned, all which appears by the aforesaid deed. And whereas, I, the aforesaid Brazeau, made this reservation, because I had verbally promised the quantity of land to Pierre Chouteau before the execution of the said deed to said Louis Labeaume, which said Pierre Chouteau paid me at the time the price agreed upon between us for this piece of land which I reserved, as heretofore set forth; and wishing and desiring to fulfill the promise I have made to the said Pierre Chouteau, and to give him title for the aforesaid land by me reserved in the sale passed between the said Louis Labeaume and me, hereinabove mentioned: Therefore know all men to whom these presents shall come, that I, the said Joseph Brazeau and Therese my wife, of the county of St. Louis, Territory of Missouri, for the consideration of one dollar, lawful money of the United States, well and truly paid to me by the said Pierre Chouteau, of the same place, as we acknowledge by these presents, and of which sum we hold his heirs or assigns acquitted and discharged, have this day sold, ceded and acquitted, released, abandoned and transferred to the said Pierre Chouteau, his heirs and assigns, all the right, titles, claims, possions, profits, pretentions, and demands which we have, and can have, to four arpents of land in depth in the south part of said concession at the foot of the aforesaid mound, bounded on the east by the Mississippi, west by lands unknown, being the same which I, the aforesaid Joseph Brazeau, reserved by the said deed, made and passed between the said Labeaume and me, above mentioned, and being the remainder of the balance of said concession of land which we granted to the said Pierre Chouteau.

JOSEPH BRAZEAU.
THERESE BRAZEAU.

Witness—
ZOE LADUC.
M. P. LADUC.

Acknowledged before me, Mary P. Laduc, July 26th, 1816. Recorded the same day in Book F, folio 38.

7th. The survey by Joseph C. Brown in November, 1817, of two tracts in one for Louis Labeaume and plat, as follows:

Survey for Labeaume by Brown.

Of confirmation certificate 982 and 983.

No. 982 and 983. Township No. 45 north, range No. 47 east, of fifth principal meridian.

Surveyed for Louis Labeaume two parts in one. The one confirmed in his own name for 356 arpents; the other under Joseph Brazeau for 4 arpents, together 360 arpents, equal to 306¼ acres, beginning at the mouth of the branch, the southeast corner of Easton's tract; thence down the Mississippi River bending therewith S. 24 deg., E. 12 chains; S. 33 deg., E. 14 chains; S. 25 deg., E. 13 chains; S. 27 deg., E. 8

chains; S. 25 deg., E. 13 chains; S. 24 deg., E. 15.50; a stone at the mouth of an old ditch the lower corner on the river; thence S. 74½ W. 11 chains 50 links, intersects the line of the common field 63 chains 50 links, a stone, the southwest corner of the tract; thence N. 15½ W. 10 chains 20 links to the branch where the road crosses; thence meandering down the same N. 50 deg. E. 2 chains 50 links; N. 25 deg., W. 5 chains 70 links; E. 2 deg., N. 6 deg.; N. 70 deg., E. 3 chains 70 links; E. 2 chains 86 links; W. 3 chains 50 links; N. 25 chains E. 4 links; N. 60 E. 1 chain 50 links; N. 36 deg., E. 2 chains 60 41 links; F. 80 deg., E. 2 chains 50 links, the mouth of the branch at the beginning.

(Signed.) JOSEPH C. BROWN, *D. S.*

I certify that the foregoing is a true copy of the survey on file in this office.

(Signed.) WILLIAM RECTOR,
Surveyor General.

No. 210, Magwire vs. Tyler, page 55.

Sur. 982 and 983, by Jos. C. Brown, Nov., 1817, of confirmation to Lebeaume and Brazeau, two tracts in one.

(Here follows map marked page 41.)

8th. Deed of Pierre Chouteau and wife to George F. Strother, dated June 1, 1826. Deed of George F. Strother and wife to John O'Fallon and John Mullanphy, in trust for the St. Louis Marine Railway Company, dated September 3d, 1830. Letters of administration on George F. Strother's estate, dated 6th March, 1841, to Alexander Hamilton. Deed of Alexander Hamilton to John Magwire, dated June 4, 1846. Deed from St. Louis Railway Company to John Magwire, dated January 3rd, 1852, as follows:

Deed of Pierre Chouteau and wife to George F. Strother, June 1, 1826, which is in the words and figures following: This indenture, made the first day June, in the year 1826, between Pierre Chouteau and Bridget, his wife, and George G. Strother, of the other part, all of the city of St. Louis and State of Missouri, witnesseth: That the said Pierre Chouteau and Bridget, his wife, in consideration of one thousand dollars to them in hand paid by the said George F. Strother, before ensealing and delivery of these presents, doth bargain and sell unto the said George F. Strother, his heirs and assignes, the following tracts and parcels of land, to wit: All that tract and parcel of land granted to the said Pierre Chouteau in October, 1799, by Carlos Dehoult Dallassus, Spanish commandant, beginning at Roy's line, running north to Labeaume's south line, and extending from the river to the common field lots west, it being intended hereby to convey to the said George F. Strother, his heirs and assigns, all the land contained within the said concession, except that heretofore sold by the said Pierre Chouteau, according to his said several contracts, to be limited by the metes and bounds limited and fixed by the intention of the said parties at the period of contracting, and one other tract of land, containing four arpents, running on the river, and running back four arpents, making sixteen arpents, lying between the north line of the first described tract of land and the south boundary of the tract of land sold by Joseph Brazeau to Labeaume, said sixteen arpents being a tract and parcel of land confirmed to Joseph Brazeau, and sold and conveyed by Joseph Brazeau to Pierre Chouteau, together with all the houses and appurtenances thereto annexed; to

have and to hold the said several tracts or parcels (piells) of land with the tenements, so intended and bargained to be sold, with every part and parcel thereof, with rights and appurtenances, unto the said
42 George F. Strother, his heirs and assigns, forever; and the said Pierre Chouteau and Bridget, his wife, do hereby warrant the same free from the claim of themselves and their heirs, and all persons claiming under them, except those who now have deeds recorded in the clerk's office of St. Louis, according to the modification of said claims aforesaid described.

In witness whereof, the said Pierre Chouteau and Bridget, his wife, have hereunto set their hands and fixed their seals, the day and year first above written.

PIERRE CHOUTEAU. [SEAL.]
SAUCIE CHOUTEAU. [SEAL.]

Signed, sealed, and delivered in the presence of—
F. P. CHOUTEAU.
C. CHOUTEAU.

Recorded in Book [illegible] p. 76.

Deed from George F. Strother and his wife to John O'Fallon and John Mullanphy, in trust, for the St. Louis Marine Railway Company, September 3, 1830, Book 2, 217, which is in the words and figures following, to wit:

This indenture, made this third day of September, in the year of our Lord one thousand eight hundred and thirty, between George F. Strother and Theodosia, his wife, of the first part, and John Mullanphy and John O'Fallon, of the second part, all of this city and county of St. Louis, State of Missouri, witnesseth: That the said parties of the first part, for and in consideration of the sum of eight thousand dollars, to them in hand paid by the said party of the second part, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, and therefor acquit and forever discharge the said party of the second part, as having received the aforesaid sum of eight thousand dollars in three several notes, bearing even date herewith, and subscribed by the said party of the second part, in favor of Henry S. Cox, cashier of the Branch Bank of the United States at St. Louis aforesaid, for the use of the United States Treasury, each of said notes for the sum of two thousand six hundred and sixty-six dollars and sixty-six and two-thirds cents, payable in one, two, and three years, with interest thereon from the day of date hereof, at the rate of six per centum per annum, until paid, they, the said party of the first part, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, their heirs and assigns, all their estate, right, title, interest, claim, and demand whatsoever, in and to the following tracts, pieces, or parcels of land, to wit: All that tract or parcel of land granted to Pierre Chouteau in October, one thousand seven hundred and ninety-one, by Carlos Dehault Delassus, Spanish commandant, beginning at Roy's line, running north to Labeaume's south line, and extending from the river to the common field lots west,
43 except that heretofore conveyed by the said Perrie Chouteau, according to his several contracts, to be limited and fixed by the intention of the said parties at the period of contracting, and also with a reservation of a parcel of the said land contracted to be sold by the said George F. Strother to Martin Thomas, as surveyed by Rene

Paul, as follows, to wit: Beginning at an old stone on the banks of the river Mississippi, and on the south side of an old ditch; thence along the upper bank of the Mississippi River south 26 degrees east, 4 chains 86, to a stone for the southeast corner; thence south 75 degrees W. 3 chains 28 links, a point in the east boundary line of the common field lots, where is a stone for the S. W. corner at the foot of and on the north side of a black-oak bush two inches in diameter; thence along said eastern boundary line N. 1 degree 30 W. 4 chains 86, to the southern boundary line of Labeaurne's survey, where intersects the same on the east of a sycamore fifteen inches in diameter, the northwest corner; thence along the said south boundary line of Labeaume, surveyor, so called, N. 75 degrees E. 11 chains to the beginning corner, containing five acres and ninety-two hundre'ths of an acre.

Also another tract of land containing four arpents running on the river and four arpents back, making sixteen arpents lying between the N. line of the first above-described tract of land and the southern boundary line of the tract of land sold by said Joseph Brazeau to Louis Labeaume, and being part of the same tracts, pieces, and parcel of land which the said George F. Strother purchased from Pierre Choteau and Bridget, his wife, by deed bearing date the first day of June, one thousand eight hundred and twenty six, as will more fully and at large appear, reference being had to the record of said deed in the recorder's office of the county aforesaid, in Book N, p. 77, together with all and singular the privileges and appurtenances: to have and to hold the aforesaid granted and bargained premises, unto the said party of the second part, their assigns forever, together with and singular the privileges and appurtenances thereunto belonging, or in anywise appertaining, in trust, however, for the sole use, benefit, and behoof of and for the St. Louis Marine Railway Company; that the said company enjoy the same as his sole and individual property. And the said party of the second part, trustees as aforesaid, shall hold said property for the sole benefit of the said St. Louis Marine Railway Company, and shall obey the written instructions of said company in all things relating to the said premises; shall rent, mortgage, sell, or dispose of the same, or any part thereof, for such consideration, to such persons, and in such manner as the said company shall direct in writing; and the rents and monies accruing from any such disposition of said property, or any part thereof. they, the said trustees, shall pay over to said St. Louis Marine Railway Company, or to their orders, and generally, and in all things, they, the said trustees and their heirs, shall faithfully, according to the true intent and meaning hereof, discharge the trust herein created; and the said parties of the first part and their heirs shall and will warrant and forever defend the premises aforesaid unto the said party of
44 the second part, their heirs and assigns, against all and every persons or persons whatsoever, who may or shall claim through or under them, the said parties of the first part.

In testimony whereof, the parties to these presents have hereunto set their hands and seals, at St. Louis, on the day, month, and year first written.

GEORGE F. STROTHER. [SEAL.]
J. O'FALLON. [SEAL.]
JOHN MULLANPHY. [SEAL.]
THEODSOSIA STROTHER. [SEAL.]

Test:
M. T. LEDUC.

and fifty-one, in pursuance of a notice of said meeting duly given, in conformity to an act of general assembly of the State of Missouri, entitled "An act to repeal the charter of the St. Louis Marine Railway Company," approved on the 15th day of February, in the year of our Lord eighteen hundred and forty-one, the following resolution was unanimously passed:

"*Resolved*, That the land belonging to, or claimed by, the St. Louis Marine Railway Company, north of what is known as Labeaume's ditch, being four arpents in front on the river, and four arpents in depth, and bounded east by the Mississippi River, and south by said ditch of Labeaume, and containing sixteen arpents, be conveyed to John Magwire; and that John O'Fallon, surviving trustee, who holds the legal title to said land, be, and he is hereby, directed to make said conveyance to said Magwire, and deliver the same."

Now, therefore, this deed, made on the second day of January, in the year of our Lord 1852, between the said St. Louis Marine Railway Company, party of the first part, and John O'Fallon, party of the second part, and John Magwire, party of the third part, witnesseth:

That the said party of the first part, for and in consideration of one dollar to the said party of the first part paid in hand by the party of the third part, and the further consideration expressed in an agreement bearing even date herewith, doth hereby grant, sell,
47 alien, enfeoff, and confirm unto him, the said Magwire, the land belonging to, or claimed by, the St. Louis Marine Railway Company, in the city of St. Louis, north of the ditch called Labeaume's ditch, and is more fully described hereinafter. And the said party of the second part, for the consideration of one dollar to him in hand paid by the party of the third part, doth hereby transfer, convey, release, and quitclaim unto the said Magwire, party of the third part, all his right, title, and interest in the said land hereinabove described, and doth convey particularly all his right and estate acquired by deed of George F. Strother and wife, and by deed of the Solicitor of the Treasury of the United States, to John O'Fallon and John Mullanphy, trustees of the said St. Louis Marine Railway Company, in the said tract of land hereinabove conveyed; to have and to hold the said above conveyed and described piece of land, with all the rights, privileges, and appurtenances thereto belonging, unto him, the said Magwire, his heirs and assigns forever. This deed is made, and is hereby declared to be subject to the performance by said John Magwire of an agreement with the stockholders of said company, bearing even date herewith.

In making this conveyance, the said John O'Fallon does not make any guaranty or incur any responsibility as to the title or otherwise.

In testimony whereof, John O'Fallon, expressly authorized so to do, hath hereunto subscribed his name in behalf of said party of the first part, and hath affixed the seal of the said St. Louis Marine Railway Company; and also John O'Fallon, surviving trustee, hath hereunto set his hand and seal.

[SEAL.] JOHN O'FALLON,
On behalf of the St. Louis Marine Railway Company, as surviving trustee.

[SEAL.] JOHN O'FALLON.

Survey No. 3342, and plat for Esther.

9th. Survey No. 3342, and plat for Esther, approved May 31, 1859, as follows: Plat and description of the survey of a tract of land seventy-

nine and sixteen-hundredth' of an acre, situate in township forty-five, north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed in the month of May, eighteen hundred and fifty-nine, by William H. Cozzens, deputy surveyor, under instructions from John Loughborough, surveyor general of Illinois and Missouri, dated the sixteenth of May, eighteen hundred and fifty-nine; this being the tract of four by twenty arpents granted to Esther, a free mulatto woman, on the fifth of October, seventeen hundred and ninety-three, by Zenon Trudeau, lieutenant governor of the Spanish province of Upper Louisiana, and confirmed to said Esther, free mulatto woman, or to her legal representatives, by the act of Congress of the fourth of July, eighteen hundred and thirty-six, entitled "An act confirming to claims to land in the State of Missouri, and for other purposes;" according to the decision, numbered seventy, of the board of commis-
48 sioners appointed under the act of Congress of the ninth of July, eighteen hundred thirty-two, entitled "An act for the final adjustment of private land claims in Missouri;" and the act of Congress of the second of March, eighteen hundred and thirty-three, supplemental thereto; from this survey, however, are excluded such parts as are interfering with other tracts confirmed by the laws of the United States, prior to the fourth July, eighteen hundred and thirty-six. (See statements of those interferences at the end of this plat and description.)

Description.

Beginning at a stone fourteen inches long, eight inches wide, five inches thick, marked with a cross on the top, set in the southern boundary of Louis Labeaume's survey, numbered three thousand three hundred and thirty-three; the northwest corney of this survey, and of Joseph Brazeau's survey, numbered three thousand three hundred and thirty-two; thence north seventy-four degrees and thirty minutes east, with the southern boundary of the Louis Labeaume survey, and the north boundary of the Joseph Brazeau survey, at seventy-six and two thirds links, a stone twelve inches long, nine inches wide, four inches thick, with the edges north and south, at the intersection with the eastern boundary of the survey numbered one thousand four hundred and ten, in the name of Gabriel Dodier's representatives, and at eleven chains and seventy-six and two-thirds links, a stone on the right bank of the Mississippi River, the southeast corner of the Louis Labeaume survey, and the northeast corner of this and of the Joseph Brazeau surveys; thence down and along the right bank of the Mississippi River, (at high-water mark,) south twenty-three degrees *degrees*, east eleven chains and sixty-six and two-thirds links to a stone; thence south eight degrees and fifty minutes, east six chains and forty links; thence south fourteen degrees and thirty minutes, east 9 chains and 87 links; thence south eleven degrees thirty minutes, east eighteen chains ten links; thence south four degrees and fifteen minutes, west nine chains and sixty-two links, to a point on the south boundary of Peter Chouteau's survey, numbered six hundred and seventy-one, which is also the north boundary of Antoine Roy's survey, numbered one hundred and eighty-one; thence south eleven degrees and thirty-five minutes, east three chains and thirty-six and one-third links, to a stone, the southeast corner of this survey; thence south seventy-four degrees and thirty minutes, west eleven chains and sixty-six and two-thirds links, a point in the pavement of Second street, in the city of St. Louis; the southwest corner of this survey, from which the southeast corner of a house at the

northwest corner of Biddle and Second streets bears south twenty-one degrees and three minutes, west forty-one feet and eight and a half inches distant, and the southwest corner of a brick house at the northeast corner of 2d Biddle street bears south forty degrees and fifty-eight minutes, east fifty-four feet and one and a half inches distant; thence north eleven degrees and thirty-five minutes west at three chains
49 and thirty-six and one-third links, a stone in the south boundary of the Peter Chouteau survey, the northwest corner of the Antoine Roy survey, and the most northern corner of survey numbered one thousand four hundred and sixteen, in the name of John Mullanphy, under H. Eglize, at forty-seven chains and seventy-six and one-third links, a stone seventeen inches long, ten inches wide, three inches thick, set at the intersection with the north boundary of the Peter Chouteau survey, and south boundary of a school land, designated as survey, numbered three hundred and ninety-one, (of a series of St. Louis lands,) from which the most eastern corner of said school land bears north seventy-four degrees and thirty minutes, east two chains and twenty and a half links distant, at fifty-four chains and twelve and one-third links a stone thirteen inches long, eight inches wide, four inches thick at the intersection with the eastern boundary of survey numbered one thousand four hundred and eighty-four, in the name of Paul G. Kiercerau, and the western boundary of said school land, from which the most northern corner of said school land bears north one degree and thirty minutes, west two chains and three links, and at fifty-eight chains and thirty-three and one-third links, the beginning corner.

Plat of survey 3342.

(Here follows map marked page 49.)

Statement of the interferences.

Statement of the interferences of survey No. 3342, with other surveys confirmed prior to the 4th of July, 1836.

No. of 3342	Names of confirmees.	Date of confirmation.	Areas of interference.
181*	Antonie Roy.....	Feb. 17, 1809.....	3.90
671*	Peter Chouteau	May 29, 1811.....	61.32
3332†	Joseph Brazeau	June 14, 1811	12.73
1410	Gabriel Dodier's rep's	Act of Congress of	00.16
1484	Paul G. Kiercereau..	the April 29, 1816.	
	Total.....		78.11

* Remarks.—Confirmed by the board of commissioners, under the act of Congress of 2 March, 1805.

† This interference includes that part of survey No. 3332 which lies north of S. 673 and east of the St. Louis common fields.

In all, seventy-eight acres and eleven*th*-hundredths of an acre, for which a certificate of new location, numbered two hundred and thirty-one, is issued this day, the thirty-first of May, eighteen hundred and fifty-nine, in conformity with the provisions of the said act of Congress of the fourth of July, eighteen hundred and thirty-six.

NOTE —The remaining part of survey numbered three thousand
50 three hundred and forty-two, containing one acre and five-hundredths of an acre, is covered by survey numbered three hundred

and nin'ty-one, (of a series of St. Louis lands,) which was, on the twenty-fifth of July, eighteen hundred and fifty-five, assigned and set apart by the surveyor general to the city of St. Louis for the support of schools.

OFFICE OF THE SURVEYOR GENERAL OF
ILLINOIS AND MISSOURI,
St. Louis, May 31st, 1859.

The foregoing plat and description of survey numbered three thousand three hundred and forty-two are this day approved, as recorded on pages three hundred and thirty-five, three hundred and thirty-six, and three hundred and thirty-seven of this book.

JOHN LOUGHBOROUGH,
Surveyor General.

OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI,
St. Louis, June 1st, 1859.

The foregoing plat and description of survey No. 3342, together with the certificate of approval thereof, are correctly copied from pages 335, 336, and 337 of record book F, on file in this office.

JOHN LOUGHBOROUGH,
Surveyor General.

Survey for Jos. Brazeau, No. 3342.

10th. Survey for Joseph Brazeau, No. 3342, approved May 8th, 1862, as follows: A tract of land of four by twenty was granted to Joseph Brazeau on the tenth and twenty-fifth of June, seventeen hundred and ninety-four, by Zenon Trudeau, lieutenant governor of the Spanish provence of Upper Louisiana, and the same, with the exception of four by four arpents reserved, sold by said Joseph Brazeau to Louis Labeaume on the ninth of May, seventeen hundred and ninety-eight; the said four by four arpents reserved, as just stated, were confirmed to Joseph Brazeau under the fourth section of the act of Congress of the third of March, eighteen hundred and seven, entitled "An act respecting claims to lands in the Territories of Orleans and Louisiana by the board of commissioners appointed under the act of the second of March, eighteen hundred and five, entitled 'An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana,'" per their certificate, numbered nine hundred and eighty-three, issued on the fourteenth of June, eighteen hundred and eleven. The tract confirmed as aforesaid was surveyed on the thirtieth of April and first of May, eighteen hundred and sixty-two, by William H. Cozens, deputy surveyor, under instructions from William Guddy, survevor general for Illinois and Missouri, dated the thirtieth of April, eighteen hundred and sixty-two; and that survey is herein platted and
51 described. The tract is situated in township forty-five, north of the base line, range seven east of the principal meridian, and contains thirteen acres and sixty-one hundre'ths of an acre.

(Here follows map, marked page 51.)

Plat of survey No. 3343.

NOTE.—The areas of the interferency with survey No. 3343 are set down with red ink on the plats.

Description.

Begin at a point on the right bank of the Mississippi River, the northeast corner of survey numbered three thousand three hundred and forty-two, in the name of Esther, free mulatto woman, or her legal representatives; the southeast corner of Louis Labeaume's survey, numbered three thousand three hundred and thirty-three, and also the southeast corner of this survey; thence south seventy-four degrees and thirty minutes west, with the southern boundary of the Louis Labeaume survey, and the northern boundary of the Esther survey, at fifty-nine feet and three inches, a stone thirteen and a half inches long, twelve inches wide, five and three-fourth inches thick, marked with a cross on the top, as witness to the southeast corner of this and of the Labeaume surveys, and to the northeast corner of the Esther survey; at two hundred and fifty-nine feet and three inches, a stone at the intersection with the west line of First street in the city of St. Louis; at five hundred and fifty-nine feet and three inches, a stone eleven and a half inches long, nine and a half inches wide, and seven inches thick at the intersection with the east line of Second street; at seven hundred and twenty-six feet and one inch, a stone at the intersection with the east boundary of survey numbered one thousand four hundred and ten, in the name of Gabriel Dodier's representatives, from which the northeast corner of that survey, and the southeast corner of Dubrasseau's survey, numbered one thousand four hundred and eighty-five, bears north one degree and thirty minutes, west two hundred and forty-three feet and six inches distant, and at seven hundred and seventy-six feet and eight inches, a stone the northwest corner of the Esther survey, and the southwest corner of this survey; thence north twenty-three degrees west, at two hundred and forty feet and six inches, a point of intersection with the southern line of Webster street; at three hundred feet and six inches, a point of intersection with the northern line of Webster street; at three hundred and twenty-eight feet and one inch, a stone twenty-one inches long, seven and one-half inches wide, and four and a half inches thick at the intersection with the line between the Gabriel Dodier and the Dubrasseau's surveys; at five hundred and forty feet and six inches, a point of intersection with the southern line of Chambers street; at six hundred feet and six inches, a point of intersection with the northern line of
52 Chambers street; at seven hundred and seventy feet a stone, twenty and a half inches long, fourteen and a half inches wide, seven and a half inches thick, the northwest corner of this survey, from which the northeast corner of a frame stable bears south ten degrees and forty-five minutes west, eleven feet and seven and a half inches distant; and the southeast corner of a brick house bears north thirty-eight degrees and fifteen minutes, west forty-six feet and four and a half inches distant; thence north seventy-four degrees and thirty minutes east at two hundred and thirty-three feet, a point of intersection with the east line of Second street; at three hundred and forty-one feet and six inches a stone, seventeen and a half inches long, seven and a half inches wide, four and a half inches thick at the intersection with the east boundary of the Debrusseau survey, from which the southeast corner of that survey and the northeast corner of the Gabriel Dodier survey bears south one degree and thirty minutes, east five hundred and forty-three feet and four inches distant; at five hundred and thirty-five feet and six inches, a stone thirteen and a half inches long, nine inches wide, six inches thick, at the intersection with the west line of First street; at seven hundred and ten feet and nine inches, a stone seventeen inches

long, thirteen and a half inches wide, and three and a half inches thick, set as witness to the northeast corner of this survey, from which the southeast corner of a brick mill bears north nineteen degrees and ten minutes, west eighty-three feet and seven inches distant, and at seven hundred and seventy-six feet and eight inches, a point on the right bank of the Mississippi River, the northeast corner of this survey, from which the southeast corner of the said brick mill bears north fifty-five degrees, west one hundred and three feet distant; thence down and along the right bank of the Mississippi River, south twenty-three degrees east, seven hundred and seventy feet, to the beginning corner. From the foregoing plat and description, it appears that survey No. 3343 is interfered with by the following surveys:

1. *Survey No.* 3333.—*Louis Labeaume.*

Louis Labeaume having bought a tract of land of four by twenty arpents, granted to Joseph Brazeau, by Zenon Tradeau, lieutenant governor of the Spanish provence of Upper Loui'iana, as hereinbefore stated, petitioned the lieutenant governor for, and obtained, a grant of three hundred and sixty arpents, including the tract acquired by Joseph Brazeau. Such concession was surveyed for three hundred and seventy-four arpents on the second of March, seventeen hundred and ninety-nine, by Antoine Soulard, surveyor general of the provence, and confirmed by the board of commissioners appointed under the act of Congress of the second of March, 1805, per their certificate No. 982, issued on the fourteenth June, eighteen hundred and eleven. Survey No. 3333, executed in eighteen hundred and fifty-one and eighteen hundred and fifty-two, is but a remeasurement and retracing of
53 the lines of the Spanish survey by Antoine Soulard; and the Joseph Brazeau survey herein platted and described takes a southeast portion of the tract. (See record, Book C, pages 338 and 339; minutes of the board, Book No. 4, page 504; Book No. 5, page 184, in the office of the recorder of land titles. See, also, American State Paper, vol. ii, page 593, Duff Green's edition, 1834.)

2. *Survey No.* 1410.—*Gabriel Dodier's representatives.*

A tract of two by forty arpents in the St. Louis commm fields, confirmed by the act of Congress of the thirteenth of June, 1812, entitled "An act making further provisions for sett'ing the claims to land in the Territory of Missouri," the extent and boundaries of the same proven before Recorder Hunt on the 13th of August, eighteen hundred and twenly-five, in conformity with the act of the twenty-sixth day of , 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, eighteen hundred and twelve, entitled 'An act making further provisions for sett'ing the claims to land in the Territory of Missouri." This tract was also confirmed by the act of the twenty-ninth of April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and the Territory of Missouri.'" The area of the interferences=0—75 acre. (See Livre Terrien, Book No. 2, pages 35, 67, and 68. Recorder Bates' minutes, pages 74 and 128; Bates' decisions, page 1; Recorder Hunt's minutes, Book No. 2, page 147, all in the office of recorder of land titles. See, also, American State Papers, vol. iii, page 296, D. Green's edition, 1834.)

3. *Survey No.* 1485.—*Dubrusseau's representatives.*

A tract of 4,940 arpents in the St. Louis common fields, confirmed by the act of the 29th April, 1816. The area of interferences=2—96 acres. See Livre Terrien, Book No. 2, pages 37, 67, and 68. Recorder Bates' minutes, page 127, and Bates' decision, page 4, in the office of the recorder of land titles. See, also, American State Papers, vol. iii, page 278, D. (Green's edition, 1834.)

OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI,
St. Louis, May 8th, 1862.

The foregoing plat and description of survey No. 3343 are hereby approved as recorded on pages 426, 427, 428, and 429, of this Book.

WILLIAM CUDDY,
Surveyor General.

[NOTE.—A certified copy of the plat and description of survey No. 3343 was delivered on the 8th May to the recorder of land titles.]

54 OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI.
St. Louis, January 6, 1863.

I hereby certify that the foregoing plat and description of survey No. 3343, in the name of Joseph Brazeau, together with the certificate of approval attached thereto, are correctly transcribed from page 426, 427, 428, and 429 of Record Book F, on file in this office.

WM. CUDDY,
Surveyor General.

Defendants objected to the admission of said survey for Brazeau, No. 3343, in evidence, for the reasons that it was made in violation of law, and without any authority of law, and after another survey on the same confirmation had been made and approved; and the court overruled said objection, and admitted the said survey in evidence, and the defendants then and there excepted to said decition.

Patent to Joseph Brazeau.

11th. Patent to Joseph Brazeau, dated June 10th, 1862, as follows:

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office a patent certificate, numbered one thousand two hundred and ninety-nine, of the recorder of land titles, at St. Louis, Missouri, whereby it appears that the claim of Joseph Brazeau, or his legal representatives, has been confirmed by the board of land commissioners, pursuant to the fourth section of the act of Congress approved the third day of March, one thousand eight hundred and seven, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana;" according to their confirmation certificate, number nine hundred and eighty-three, of which claim a survey has been made pursuant to the decision dated April ninth, one thousand eight hundred and sixty-two, of the Secretary of the Interior, and of which survey a transcript, certified the twenty-sixth of May, one thousand eight hundred and sixty-two, by the surveyor general of Illinois

and Missouri, accompanies the said patent certificate in the words and figures following, to wit:

Survey No. 3343.

A tract of land of four by twenty arpents was granted to Joseph Brazeau on the tenth and twenty-fifth of June, seventeen hundred and ninety-four, by Zenon Trudeau, lieutenant governor of the Spanish provence of Upper Louisiana, and the same, with the exception of four by four arpents reserved, sold by said Joseph Brazeau to Louis Labeaume, on the ninth of May, seventeen hundred and ninety-eight. The said four by
55 four arpents reserved, as just stated, were confirmed to Joseph Brazeau under the fourth section of the act of Congress of the third of March, eighteen hundred and seven, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," by the board of commissioners appointed under the act of the second of March, eighteen hundred and five, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana," per their certificate, numbered nine hundred and eighty-three, issued on the fourteenth of June, eighteen hundred and eleven. The tract confirmed as aforesaid was surveyed on the thirtieth of April and first of May, eighteen hundred and sixty-two, by William H. Cozens, deputy surveyor, under instructions from William Cuddy, surveyor general for Illinois and Missouri, dated the thirtieth of April, eighteen hundred and sixty-two, and that survey is herein platted and described. The tract is situated in township forty-five north of the base line, range seven east of the fifth principal meridian, and contains thirteen acres and sixty-one hundre'th of an acre.

Plat of Brazeau survey, No. 3343.

(Here follows map, marked page 55.)

Note.—The areas of the interferences with survey No. 3343 are set down in red ink on the plat.

Variation 7½° east; scale of 300 feet to an inch.

Description.

Beginning at a point on the right bank of the Mississippi River, the northeast corner of survey numbered three thousand three hundred and forty-two, in the name of Esther, free mulatto woman, or her legal representatives, the southeast corner of Louis Lebeaume's survey, numbered three thousand three hundred and thirty-three, and also the southeast corner of this survey; thence south seventy-four degrees and thirty minutes west, with the southern boundary of the Louis Lebeaume survey, and the northern boundary of the Esther survey, at fifty-nine feet and three inches, a stone thirteen and a half inches long, twelve inches wide, five and three-fourths inches thick, marked with a cross on the top, witness to the southeast corner of this and of the Labeaume surveys, and to the northeast corner of the Esther survey, at two hundred and fifty-nine feet and three inches, a stone at the intersection with the west line of First street, in the city of St. Louis, at five hundred and fifty-nine feet and three inches, a stone eleven and a half inches long, nine and a half inches wide, and seven inches thick, at the intersection with the east line of Second street; at seven hundred and twenty-six feet and one inch a stone at the intersection with the east boundary of

survey numbered one thousand four hundred and ten, in the name of Gabriel Dodier's representatives, from which the northeast corner of that survey, and the southeast corner of Dabrusseau's survey,
56 numbered one thousand four hundred and eighty-five, bears north one degree thirty minutes west, two hundred and forty-three feet and six inches distant; and at seven hundred and seventy-six feet and eight inches a stone, the northwest corner of the Esther survey, and the southeast corner of this survey; thence north twenty-three degrees west, at two hundred and forty feet and six inches, a point of intersection with the southern line of Webster street; at three hundred feet and six inches, a point of intersection with the northern line of Webster street; at three hundred and twenty eight feet and one inch a stone, twenty-one inches long, seven and a half inches wide, and four and a half inches thick, at the intersection with the line between the Gabriel Dodier and the Debrusseau surveys; at five hundred and forty feet six inches, a point of intersection with the southern line of Chambers street; at six hundred feet and six inches, a point of intersection with the northern line of Chambers street, and at seven hundred and seventy feet a stone, twenty and a half inches long, fourteen and a half inches wide, seven and a half inches thick, the northwest corner of this survey, from which the northeast corner of a frame stable bears south ten degrees and forty-five minutes west, eleven feet and seven and a half inches distant, and the southeast corner of a brick house bears north thirty-eight degrees and fifteen minutes west, forty-six feet and four and a half inches distant; thence north seventy-four degrees and thirty minutes east, at two hundred and thirty-three feet, a point of intersection with the east line of Second street; at three hundred and forty-one feet and six inches, a stone seventeen and a half inches long, seven and a half inches wide, four and a half inches thick, at the intersection with the east boundary of the Debrusseau survey, from which the southeast corner of that survey and the northeast corner of the Gabriel Dodier survey bears south one degree and thirty minutes east, five hundred and fifty-three feet and four inches distant; at five hundred and thirty-five feet and six inches, a stone thirteen and a half inches long, nine inches wide, six inches thick, at the intersection with the west line of First street; at seven hundred and ten feet and nine inches, a stone seventeen inches long, thirteen and a half inches wide, and three and a half inches thick, set as witness to the northeast corner of this survey, from which the southeast corner of a brick mill bears north nineteen degrees and ten minutes west, eighty-three feet and seven inches distant; and at seven hundred and seventy-six feet and eight inches, a point on the right bank of the Mississippi River; the northeast corner of this survey, from which the southeast corner of the said brick mill bears north fifty-five degrees west, one hundred and three feet distant; thence down and along the right bank of the Mississippi River, south twenty-three degrees east, seven hundred and seventy feet to the beginning corner. From the foregoing plat and description it appears that survey No. 3343 is interfered with by the following surveys:

1st survey, No. 3333.—Louis Lebeaume.

Louis Labeaume having bought a tract of land of four by twenty arpents, granted to Joseph Brazeau by Zenon Trudeau, lieutenant
57 governor of the Spanish province of Upper Louisiana, as hereinbefore stated, petitioned the lieutenant governor for, and obtained a grant of three hundred and sixty arpents, including the tract acquired

of Joseph Brazeau. That concession was surveyed for 374 arpents on the second of March, 1799, by Antoine Soulard, surveyor general of the province, and confirmed by the board of commissioners appointed under the act of Congress of the second of March, eighteen hundred and five, per their certificate No. 982, issued on the fourth of June, 1811; survey No. 3333, executed in eighteen hundred and fifty-one and eighteen hundred and fifty-two, is but a measurement and retracing of the lines of the Spanish survey of Antoine Soulard, and the Joseph Brazeau survey herein platted and described takes a southeast portion of the tract. (See record Book C, pages 338 and 339; minutes of the board, Book No. 4, page 305; Book No. 5, page 184, in the office of the recorder of land titles; see also American State Papers, Vol. II, page 593, Duff Green's edition, 1834.)

2. *Survey No.* 1410.—*Gabriel Dodier's representatives.*

A tract of two by forty arpents, in the St. Louis common fields, confirmed by the act of Congress of the 13th June, 1812, entitled "An act making further provision for setling the claims to land in the Territory of Missouri;" the extent and boundaries of the same proven before Recorder Hunt, on the 13th of August, 1825, in conformity with the act of the 26th of May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled "An act making further provision for setling the claims to land in the Territory of Missouri." This tract was also confirmed by the act of the twenty-ninth of April, eighteen hundred and sixteen, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana, and the Territory of Missouri."

The area of the interference=0.75 acre. (See Livre Terrien, Book No. 2, page 35–67 & 68; Recorder Bates' minutes, pages 74 and 128; Bates' decision, page 1; Recorder Hunt's minutes, Book No. 2, page 147, all in the office of the recorder of land titles; see also American State Papers, Vol. III, page 276, D. Green's edition, 1834.)

3. *Survey No.* 1485.—*Debrusseau's representatives.*

A tract of four by 40 arpents in the St. Louis common field, confirmed by the act of the 29th April, 1816.

The area of the interference=2—96 acres.

(See Livre Terrien, Book No. 2, pages 37–67 and 68; Recorder Bates' minutes, page 127, and Bates' decisions, page 4, in the office of the recorder of land titles; see also American State Papers, Vol. III, page 278, D. Green's edition, 1834.)

58 OFFICE OF THE SURVEYOR GENERAL FOR
ILLINOIS AND MISSOURI,
Saint Louis, May 26th, 1862.

The foregoing plat and description of survey No. 3343 are correctly copied from the approved plat and description of said survey, recorded on pages 426, 427, and 428 and 429 of Record Book F, on file in this office.

WM. CUDDY,
Surveyor General.

General Land Office note.—The present Brazeau survey falls within the exterior limits of survey No. 3333, patented to Louis Labeaume, or his legal representatives, March 25th, 1852.

Now, know ye, that there is therefore granted by the United States unto the said Joseph Brazeau, or his legal representatives, and to his or their heirs, the tract of land as described in the aforesaid survey number three thousand three hundred and forty-three, saving and reserving any valid adverse rights which may exist to any part thereof; to have and to hold the said tract of land, according to the said survey numbered three thousand three hundred and forty-three, unto the said Joseph Brazeau, or his legal representatives, and to his or their heirs or assigns forever, with the saving and reservation as aforesaid.

In testimony whereof I, Abraham Lincoln, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the tenth of June, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States the eighty-sixth.

By the President:

ABRAHAM LINCOLN,
By W. V. STODDARD, *Sec'y.*
I. N. GRANGER,
Recorder of the General Land Office.

Recorded Vol. II, pages 543, 544, 545, 546, 547, 548, 549.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder in and for the said county, do hereby certify that the foregoing instrument of writing was filed for record in my office, July 14th, 1862, and is truly recorded in Book No. 265, p. 385.

Witness my hand and official seal the day and year aforesaid.

[L. S.] A. C. BERNOUDY,
Recorder.

The defendants objected to the admission of said patent to Brazeau of 1862, in evidence, for the reason that another patent for land in another place has been issued to Brazeau, under the same confirmation in
59 1852, and had passed the great seal, and had been used in court, and has been held to be valid, and because the said second patent of 1862 was issued illegally and without authority of law, and the court admitted said patent of 1862 in evidence and overruled defendant's objections; and the defendants then and there excepted to the decision of the court.

12th. Patent certificate to Louis Labeaume on survey No. 3333, dated February 26th, 1852, issued by the Recorder of Land Titles. United States survey No. 3333, and patent to Louis Labeaume and his legal representatives, dated 25th day of March, 1852, as follows:

Survey No. 3333.

The foregoing plat and the following description correctly describe and represent the survey executed by me in the months of August, September, October, and November, 1851, and January, 1852, under instructions from M. L. Clark, esq., surveyor general of the United States for the States of Illinois and Missouri, dated 22d August, 1851, authorizing and appointing me to survey and connect with the lines of the adjoining survey of private claims, a tract of 374 arpents of land for Louis Labeaume, executed by Antoine Soulard, Spanish surveyor general of Upper Louisiana, on the 2d of March, 1799, ascertaining the aforesaid

quantity of 374 arpents of land, in conformity with, and in virtue of, the decree of Lieutenant Governor Trudeau, of the 15th of February, 1699, and ordered to be surveyed by the Commissioner of the General Land Office, on the twenty-ninth of July, eighteen hundred and fifty-one, according to Soulard's aforenamed survey, and in conformity with the decision of the Secretary of the Department of the Interior of the 25th of July, 1851.

Begin on the bank of the Mississippi river, between high and low-water mark, on the extension eastward of Labeaume's southern ditch, where set a stake from which the northeast corner of the ruins of stone house, built by the late Martin Thomas, esq., for a distillery, and bears south 57¾ W. 129 links distant, set a stake at this beginning, which is the place of Brown's old corner; thence south 74½ W., with the southern boundary line of the survey established by Antoine Soulard, and with the line of Labeaume's southern ditch.

Chains 0.80. The top of the high bank of the Mississippi river.

Chains 4.23. A set stone at S. E. corner of an enclosure.

Chains 8.56. A set stone at S. W. corner of said enclosure.

Chains 9.72. A set stone at S. E. corner of another enclosure.

Chains 11.00. A set stone at the intersection of the east boundary of the St. Louis common field, 233¼ links northward of the S. E. corner of survey No. 1410.

Chains 11.76¼. The N. W. corner stone of the survey of 16 arpents of land executed by me for Joseph Brazeau in December, 1851, under the before-named instructions and decision.

Chains 14.76. Intersect the eastern edge of Broadway McAdamizing; (for connection run S. 13° E. 208 links, to the north side of Labeaume street, 42 links westward of the northeast corner of Labeaume
60 street and Broadway, and N. 20¾ W., 420 links, to the north side of Webster street, 35 links westward of the N. E. corner of Webster street and Broadway.)

Chains 14.94½. The centre line of Broadway.

Chains 14.13. The edge stones on the western side of Broadway McAdamizing.

Chains 15.47. Line between surveys 1410 and 1484, 450 links west of corner on E. boundary of common field.

Chains 22.50. Ascending the hill here, there is no further appearance of the old ditch; this is the place of the S. W. angle thereof.

Chains 22.97. Intersect a lot occupied by Mr. Aldrich, the N. E. corner links northward of S. E. corner of brick house, and links northward of the S. E. corner of lot on Labeaume street.

Chains 25.85. The west edge of a set stone on the east side of 10th street.

Chains 27.22. The east edge of a stone on the west side of 10th street.

Chains 28.45. The east edge of a set stone.

Chains 30.59½. The east edge of a set stone.

Chains 32.68. A large set stone at the intersection with the line between surveys 1484 and 1483, 21 chains and 64 links northwestward of the corner of said surveys No. 1484 and 1483, on the eastern boundary of the St. Louis common field.

Chains 38.56. Intersects the south line of survey 1483 at the N. W. corner of a school lot, survey 397; 27 chains and 56 links northwestward from the corner of said surveys 1483 and 379 on the eastern boundary of the St. Louis common field; this intersection is in the garden of Major Edward Dobbins, and near his house. I do not, therefore, set a

stone, but perpetuate the place of said intersection by the course and distance to a corner of his house, viz: The southwestern corner of the main part of the house bears S. 77 deg. E. 123 links distant.

Chains 40.10. Leave Major Dobbin's garden.

Chains 40.18¼. A small set stone, (with the line.)

Chains 40.48. A large set stone, (with the line.)

Chains 41.42. A large set stone, (1 across the line.)

Chains 42.62. A small set stone, (with the line.)

Chains 43.10. A large pond 50 links over, (E. W.)

Chains 44.20. A large set stone (with the N. line) at the intersection with the northern line of survey No. 1482 at the S. W. corner of survey No. 379, 33 chains and 27 links northwestward from the corner thereof on the east boundary of the St. Louis common field.

Chains 46.35. A large set stone, (1 across the line.)

Chains 47.24½. A large set stone, (1 across the line.)

Chains 49.96. A large set stone (with the line) at the intersection of the line between surveys 1482 and 1481, 39.14 chains northwestward from the corner of said surveys on the east boundary of the St. Louis common field.

Chains 51.32. A large set stone, (with the line.)

Chains 52.18. A large set stone (1 across the direction of the line) is 7 links to the left.

61 Chains 55.38. A small set stone (1 across the direction of the line) is 7 links to the left.

Chains 55.74. Set a limestone, 15 inches long, 10 inches wide and four inches thick, at the intersection with the line between surveys 1481 and 1480, from which the old white oak witness tree, now 8 inches diameter, bears N. 40 E. 15 links distant, (the other old witness tree has gone,) and a red oak, 8 inches diameter, bears N. 59½ W. 10 links distant. This intersection is 45.04 chains northwestward from the corner of said surveys No. 1481 and 1480 on the eastern boundary of the St. Louis common field.

Chains 60.83½. Intersects Tyler's western fence 10 links northward of the S. W. corner of his enclosure.

Chains 61.48. Intersect the line between surveys 1480 & 1479, 50.89 chains northwestward from the corner thereof, on the east boundary of the St. Louis common field; set a line 14 inches long, 8 inches wide and three inches thick, from which the centre of the northern opening of the culvert across Mullanphy street bears S. 13½ E. 52 links distant.

Chains 63.08. Cross the water pipe on Mullanphy street.

Chains 64.33. Cross the water pipe on 17th street.

Chains 64.72. Intersect James Clemen's fence on the west side of 17th street, 39 links south 15 deg. west, from the northern corner of his lot.

Chains 67.02. Intersect the line between surveys 1479 & 739 56.74 chains, northwestward from the corner thereof, on the east boundary of the St. Louis common field.

Chains 23.00. Arpents, the distance called for the old Spanish survey, equal to 67.08⅛ chains; set a limestone 30 inches long, 12 inches wide and 10 thick, for the southwestern corner of this survey, in James Clemen's enclosure; thence N. 15½ deg. W. with the western boundary line of this survey.

Chains 0.03½. Intersects the line between surveys 734 & 1479, 62.43 chains S. 75½ deg. E. from the corner of said surveys on the western boundary of St. Louis common field.

Chains 1.17. Intersects the northwestern boundary line of the city of St. Louis, 51.53 chains S. 22 deg. W. from a stone on said city bound-

ary line inside this survey, which stone is 186.33 chains N. 22 E. from the angle of the city boundary line on the north side of Choteau avenue.

Chains 1.83½. Intersect James Clemen's fence on the south side of Mullanphy street, 295 links N. 75 deg. W. from the corner of this enclosure to the S. W. corner of Mullanphy and 17th streets.

Chains 3.40. Intersect the line between surveys 1479 & 1480, 61.71 chains S. 75¼ deg. E. from the corner of said surveys on the western boundary of the St. Louis common field, set a stone 15 inches square and 3 inches thick.

Chains 6.77. Intersect the line between surveys 1480 & 1481, (60.97 chains S. 76 deg. E from the corner thereof, on the western boundary of the St. Louis common field,) in a pond 150 links over. I cannot therefore set a stone at said intersection.

62 Chains 10.18. Intersect the line between surveys 1482 & 1481, 60.07 chains S. 75¼ deg. E. from the corner thereof on the western boundary of the St. Louis common field, set a limestone 18 inches long, 12 inches wide and four inches thick.

Chains 13.61. Intersect the line between surveys No. 1482 & 280, at Hanfield's southern fence, 15¾ links eastward of his S. W. corner, and 59.01 chains S. 75¼ deg. E. from the corner of said surveys 1481 & 380, in the western boundary of the St. Louis common field, at said intersection set a limestone 15 inches long, 12 inches wide and 5 inches thick.

Chains 16.98. Set a limestone 12 inches square and six inches thick, on the line between surveys 380 & 1483, 58.29 chains S. 75¼ deg. E. from the corner of said surveys in the western boundary of the St. Louis common field.

Chains 20.38. Intersect the line between surveys 1483 & 1484, set a triangular limestone, 14 inches at the base, 16 inches on the two sides, and 8 inches thick, with large end down, 57.41 chains S. 75¼ E. from the corner of said surveys on the western boundary of the St. Louis common field, and 39.98 chains N. 75¼ deg. W. from the intersection of this line between the surveys 1483 & 1484 by the southern boundary of this survey.

Chains 22.19. Intersect the eastern jamb of the main front door entrance to George Emerick's brick house, 26 links westward of the S. E. corner of said house.

Chains 30.49. Intersect the line between surveys 1484 & 1410, 54.44 chains, S. 75¼ deg. E. from the corner of said surveys on the western boundary of the St. Louis common field; at said intersection, set limestone 14 inches long, 10 inches wide, and 8 inches thick.

Chains 37.23. Intersect the line between surveys 1410 & 1485, on the slope of a large sink-hole facing eastward, and 52-68 chains S. 75¼ E. from the corner of said surveys on the western boundary of the St. Louis common field; at said intersection, set a limestone 18 inches long, 10 inches wide, and six inches thick.

Chains 16.00. Arpents, the distance called for in the old Spanish survey, equal to 44.66⅔ chains, should be the place of the corner, according Soulard's plat, but this falls short of the northern boundary prolonged S. 74½ W. in continuation of the old ditch, which marks the former position of the northern boundary line. I therefore proceeded, and at 47.28 chains, intersect the said prolongation of the line of said old ditch, where set a limestone 40 inches long, 12 inches wide and 8 inches thick, with the smallest end 14 inches above the natural surface of the ground for the northwest corner of the survey. Thence N. 74½ E. with the northern boundary line of this survey.

Chains 1.97. A large old set stone, the S. W. corner of survey No. 3209 of Gabriel Cerre.

Chains 5.89. Intersect the line between surveys 1485 & 3306, 57.00 chains S. 75¼ E. from the corner of said surveys on the western boundary of the common field.

Chains 6.23. The place of the northwest corner of survey 2974 of 356 arpents, executed by Joseph C. Brown, in 1833, for Louis Labeaume.

63 Chains 23.17. Intersect the line between surveys No. 3306 & 2974, at an old stone, 74.03 chains S. 75¼ E. from the corner of said surveys on the western boundary of the St. Louis common field.

Chains 27.12. A set stone at the intersection of the centre of a street called Wright street, with the east side of 12th street, formerly 7th street, at the angle thereof.

Chains 29.94. A set stone.

Chains 28.50. A set stone.

Chains 32.91. A set stone on the west side of 11th, formerly 6th street.

Chains 32.91. A set stone on the east side of said 11th, formerly 6th street.

Chains 34.36. The east side of the old road in descending the hills. About here is the N. range of Labeaume ditch. Then the line runs along the N. edge of the northern ditch.

Chains 35.34. Intersect the line between surveys 1486 and 1487 90 chains S. 75¼ E. from the corner of said surveys on the west boundary of the St. Louis common field; at this intersection set a limestone 20 inches long, 8 inches wide, and 4 inches thick, from which a sycamore 24 inches in diameter bears S. 74¼ S. 2½ links distant.

Chains 35.72. Intersects the northwestern boundary line of the city of St. Louis 6.72 chains, N. 22 E. from a set stone on said city boundary line, and on the hill, which said stone on the hill is 186.33 chains; N. 22 E. from the angle in the city line on the north side of Chouteau avenue; set a stone at this intersection.

Chains 37.86. The place of the old corner-stone established by Soulard, on the north side of the old ditch, and found by Joseph C. Brown in November, 1817, in executing a survey, Nos. 982 and 983, of 360 arpents, in the names of Louis Labeaume and Joseph Brazeau, and also afterwards in May, 1833, whilst executing a survey of 356 arpents, numbered 2974, in the name of Louis Labeaume, and then perpetuated by taking the course and distance to sycamore tree which I find standing and in good preservation, with Mr. Brown's marks thereon; the main upright stem of said sycamore tree is 24 inches in diameter, and it bears (as reported by Mr. Brown) N. 85 E. 40 links distant. I set a limestone at this corner 40 inches long, 10 inches wide, and 4 inches thick, 30 inches in the ground. The distance called for in the old Spanish survey of this line is 13 arpents, 6 poles, equal to 39.66⅔ chains; but I find the place of the old stone 180⅔ chains short of this distance, (1.75 chains being equal to 6 poles, so that the line may be said to be only 13 arpents, as my measure makes it only 5⅔ links short of that:) thence N. 13½ W.

Chains 0.77. A set stone on the south side of a street is 2⅔ links to the left.

Chains 1.69. A set stone on the north side of said street is 6 links to the left.

Chains 2.94. I intersect the northwest boundary of the city of St. Louis 10.44 chains, N. 22 E. from a set stone on the hill on said

64 city line, which said stone on the hill is 186.33 chains, N. 22 E.

from the angle of the city line at the north side of Chouteau avenue; set a stone at this intersection.

Chains 4.71. Intersect the north boundary of the St. Louis common field 94.13 chains, S. 75¼ E. from the N. W. corner of the St. Louis common field, and 19⅜ links, S. 75½ E. from the stone on said line at its intersection, by the line of Mr. Brown, run N. 15½ W.; set a limestone 12 inches long, 4 inches wide, and three inches thick at this intersection.

Chains 6.35. A set stone 18 links to the left.

Chains 6.88. The west side of the N. W. prong of a double blac oak; this N. W. prong is 15 inches in diameter.

Chains 3.00. Arpents 6 poles at the distance called for in the old Spanish survey, equal to 10.15 chains, intersect the old bed of the Rocky Branch, where, being on the rocky bottom, I cannot set a stone; the N. W. corner of the southern abutment of the arch of the bridge, across the Rocky Branch on the Bellefountaine road, bears N. 9 E. 10 links distant, from which corner of the abutment Brown's corner, on the Rocky Branch of survey No. 2974, as executed in 1833, bears S. 269.50′ W. 63 links distant; and from this corner of my survey in the old bed of the Rocky Branch I run, to show the track of the old road, S. 22 W. 3.06 chains, centre of the old road at the foot of the hill; thence S. W. with the centre of the old road, ascending the hill 290 chains, brow of the hill 8.30 chains, intersect the north boundary line of my survey 1 chain and 31 links, S. 74½ W. from the intersection with the line between survey No. 1486 and 1487; return to the corner in the old bed of the Rocky Branch at 10.50 chains on the line, run N. 13½ W., and run thence down the meanders of the Rocky Branch, as near as practicable, with the center of the old bed thereof, as indicated by present appearances, and from the best knowledge I could obtain by diligent inquiry of those most able to give correct information respecting the recent changes, which have been made. I have also referred to the old deeds and plats of owners on opposite sides of the branch, N. 72½ E.

Chains 0.04. Intersect the western side of the bridge across the Rocky Branch on the Bellefountaine road 9 links, S. 14½ E. from the inside of the southern abutment.

Chains 0.44. Intersect the eastern side of said bridge 5 links, S. 14½ E. from the inside of the southern abutment.

Chains 1.53. Set a stake in old bed of the branch, and on the right bank of the present bed of the branch; thence N. 42½ E.

Chains 1.05. Set a limestone 16 inches long, 8 inches wide, and 6 inches thick, marked z on the top, in the former bed of creek, on hillock made for turning water from the stone wall, which is 10½ links N. 42½ E. from said stone; from this stone an elm 30 inches in diameter at the foot of the aforesaid stone wall and the southern edge of a well, both bear N. 2′ E., the well 11 links, and the elm 69 links distant, and another elm 10 inches in diameter bears N. 40 W. 37½ links distant; thence N. 3½ E.

65 Chains 1.32. A point on the west side of a curve in the stone wall from which the centre of the north end of the straight part of the said wall bears S. 2 E. 60 links distant, and 113 links further on the same course, (S. 2 E.) to the southern end of said stone wall; thence N. 24½ W.

Chains 0.80. A point in the water of the branch 4 links to the westward from the northern end of the stone wall; thence N. 55 W. with the branch.

Chains 0.80. Passed on the western side of an elm 24 inches in diameter, standing on the right bank of the branch.

Chains 1.60. A point on the left edge of the water of the branch; thence N. 47¼ W.

Chains 1.59. A point on the middle of the old bed of the branch at a part of the fence between the lots now in the possession of Hubb, on the south, and of Hayne under Farmer, on the north, 2 chains, and N. 70 E. from their division corner on the east side of the Bellefountaine road, and 14 links S. 70 W. from the corner post of their division fence on the left bank of the present bed of the branch, is so evidently beyond dispute, the branch having been turned from its original channel by a stone wall a few links above, but the original bed is yet plainly marked; thence N. 3¼ W.

Chains 1.00. A point on the left bank of the branch; thence N. 51¾ E.

Chains 0.73. A point in the branch; thence S. 72½ E.

Chains 3.39. A point in Ashbrook's pork-house; thence N. 17½ E.

Chains 0.59. A point of the western side of a house appendant to Ashbrook's pork-house; thence north.

Chains 1.00. To a point in the old bed of the branch; thence N. 64 W.

Chains 2.32. A point in the old bed of the branch; thence N. 1 W.

Chains 1.26. The N. W. corner of a brick house in the old bed of the branch, the centre thereof, and 256 links S. 69 W. from the S. W. corner of Dock street and Broadway; thence N. 33¾ W.

Chains 0.77. The north side of Dock street 273 links S. 69 W. from the northwest corner of Dock street and Broadway.

Chains 0.91. A point in the old bed of the branch; thence N. 25½ E.

Chains 1.00. A point in Brown's old line; thence S. 82¾ E.

Chains 1.10. A point 30⅜ links N. 21 W. from the north side of Dock street; thence N. 5¾ W.

Chains 2.02. A point in the present and old bed of the branch and on Brown's old course; hence S. 78½ E.

Chains 0.63. Intersect the west side of Broadway 191 links N. 21 W. from *from* the N. W. corner of Broadway and Dock street and at the N. E. corner of a frame-house; thence S. 79½ E. across Broadway, which is 80 feet wide at and southward from these meanders.

Chains 1.44. The east side of Broadway 115 links N. 21 W. from the N. E. corner of Broadway and Dock streets; thence N. 86½ E.

Chains 0.95. A point 86¼ links N. 21 W. from the north side of Dock street; thence N. 24 E.

66 Chains 0.63. A point 13¾ N. 21 W. from the north side of Dock street; thence N. 5 W.

Chains 0.52. A point 208 links S. 69 W. from the west side of 2d street and Main street; thence N. 3 E.

Chains 1.99. A point 127 links S. 69 W. from the west side of 2d or Main street, and 245 links N. 69 E. from the east side of Broadway; thence N. 9¾ E.

Chains 0.66. A point 93¼ links S. 69 W. from the west side of 2d or Main street, and near the present drain of the branch; thence N. 70¼ W., passing through a brick slaughter-house.

Chains 1.18. The division line between Overman and Overfeldt, and in the old bed of the branch; thence S. 69 west with the line between Overman and Overfeldt, and down the old bed of the branch.

Chains 1.79. A point in the east side of Broadway, which is here 70 feet wide; thence N. 55¼ W.

Chains 1.34. A point in Broadway; thence N. 27¼ E.

Chains 1.00. A point in the old bed of the branch on the east side of Broadway, 59 links south 21 E. from the S. E. corner of Broadway and Buchanan street, and 101 links N. 21 W. from the N. W. corner of Overman's brick house; thence N. 51½ E.

Chains 1.10. A point in the old bed of the branch; thence S. 64½ E.

Chains 1.70. A point in the old bed of the branch; thence N. 64½ E.

Chains 0.42. A point in the old bed of the branch; thence N. 27½ W.

Chains 1.70. A point in the old bed of the branch, (in Buchanan street;) thence N. 41½ E.

Chains 1.45. A point in the old bed of the branch on the west side of 2d or Main street, 832 links N. 21 W. from the N. W. corner of said street and Dock street; thence S. 48½ E.

Chains 2.62. A point on the east side of 2d or Main street.

Chains 3.07. A point in the old bed of the branch; thence N. 87½ E.

Chain 5.46. The mouth of the Rocky Branch, and which accords with the designation thereof, in the survey of the northwestern boundary line of the city of St. Louis; from the mouth of the branch the N. W. corner of 2d or Main street and Dock street bears S. 37¼ W., 771 links distant, and on the northwest boundary line of the city of St. Louis it is S. 22 W., 661 links to the south boundary of Dock street at a point 208 links N. 69 E. from the S. W. corner of said street, and 2d or Main street; also the point adopted by Mr. Brown, as the mouth of the branch in his survey of 1833, bears S. 53¼ W., 170 links distant, and the point which he adopted as the mouth in his survey of 1817, bears S. 80½ W., 462 links distant, and it is 735 links at a corner of N. 81 E. across a high and increasing sand beach on the Mississippi River to the edge of the water thereof, showing a continued augmentation of the innings; it is 466 links
67 on the course S. 67 W. to what is called the first bank of the Mississippi River, and 250 links further to the high bank; the water of the Rocky Branch, from appearance not to be mistaken, formerly made its way from the point which I have adopted, as its mouth through the sand beach to the water of the Mississippi River, in a northwest westwardly direction, and united therewith some distance above, which, I believe, is generally if not universally the case where sand-bars are formed at the mouth of water-courses emptying into the Missouri and Mississippi Rivers, and it may be so of all other large rivers, but my own personal knowledge in this respect extends only to there; at present, however, the water of the branch runs from here through the said beach in a southeastwardly direction and unites with the water of the river some distance, as will be presently shown, (it having, by unmistakable evidence, been rather recently directed from its natural and ordinary course by manual operations, intended to produce this result,) from the mouth of the Rocky Branch as before designated. I run down the right bank of the Mississippi River with the meanders thereof, between the high and low water marks, as follows, S. 9 E.

Chains 8.66. Set a stone on the line of Mr. Brown's meanders of 1833, 8 chains S. 20 E. from the then mouth of the Rocky Branch, and from this stake on a course S. 53 W., it is 240 links to the first or low bank, and 450 links to the high bank of the Mississippi River; thence S. 20 E. with Mr. Brown's meandering line of 1833.

Chains 5.50. A point from which I offset N. 70 E. 183 links centre of the Rocky Branch as it now runs through the sand beach, and 6.63 chains to the bluff of the sand beach, and 7.47 chains to the water of the Mississippi River.

Chains 10.00. Set a post at the angle of Mr. Brown's meanders of 1833, a 140 links N. 53 E. from a point on the high bank of the Mississippi River; from this post the southeast corner post of a stable on the slope of the bank bears S. 42 W., 46 links, and the upper point of the present entrance of the water of the Rocky Branch into the water of the Mississippi River bears S. 62½ E., 16 chains; thence S. 34 E.

Chains 7.05. The extention eastward of Labeaume's upper ditch 19.75 chains N. 74½ E. from the corner of his survey with the sycamore witness tree.

Chains 15.34. A point from which the N. E. corner of survey. No. 1487, bears S. 56 W. 81 links distant; said corner is on the slope of the high bank.

Chains 25.00. Set a stake at an angle of Mr. Brown's meanders of 1833, from which the corner of surveys 1486 and 1487 on the east boundary of the St. Louis common field, and on the high bank, bears N. 75¼ W. 200 links distant, it being 140 links to the slope of the high bank; thence S. 23 E. with Mr. Brown's line of 1833.

Chains 6.30. A point from which it is 76 links S. 67 W. to the slope of the high bank and on the corner of surveys 3306 and 1486, on the high bank of the river, and on east edge of an old lime-kiln, bears S. 67 N., 154 links distant.

68 Chains 13.67. The N. E. corner of Robertson & Patterson's steam saw-mill, from which the foot of the high bank of the Mississippi river is 92 links, and the top of said bank is 117 links on a course S. 67 W.

Chains 14.08. S. E. corner of said mill.

Chains 17.05. Corner of a steam saw-mill, is 30 links to the right.

Chains 20.57. S. E. corner of Hendrick's flour mill, is 19 links to the right.

Chains 23.35. N. E. corner of Cochran's saw-mill.

Chains 30.95. The beginning corner, containing 339.68 acres, equal to 399.30 arpents, being an excess of 21.52 acres, equal to 25.40 arpents over the quantity called for by Soulard.

February 2d, 1852.

WILLIAM MILBURN,
Deputy Surveyor.

OFFICE OF THE SURVEYOR GENERAL FOR ILL. AND MO.,
St. Louis, February 2 th, 1852.

The foregoing field notes on pages 1 to 33 inclusive, of survey No. 3333, of 339.68 acres, equal to 399.30 arpents, as returned by William Milburn, deputy surveyor, under his instructions of the 22d of August, 1851, from this office, have been examined and found correct, and the said survey has been executed in conformity to said instruction.

M. LEWIS CLARK,
Surveyor General.

OFFICE OF THE SURVEYOR GENERAL FOR ILL. AND MO.,
St. Louis, March 9th, 1853.

I certify that the foregoing, on pages 1 to 30 inclusive, are correctly copied from the original field notes of survey No. 3333, as executed by William Milburn, under instructions from this office of 22d August, 1851.

D. A. SPAULDING,
Surveyor General.

Recorder's certificate on survey No. 3333.

Patent certificate No. 1249.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, February 26th, 1852.

It is hereby certified, that on the 15th of February, 1799, Zenon Trudeau, lieutenant governor of the Spanish provence of Upper Louisiana, made a concession of about 360 arpents of land to Louis Labeaume, and that on the second of March, of the same year, it was surveyed by Antoine Soulard, surveyor of the same province, to the amount of 374 arpents, situated three miles north of the town of St. Louis. It is
69 further certified that the board of commissioners, appointed in pursuance of the fifth section of the act of Congress approved the 2nd of March, 1805, entitled "An act for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and the district of Louisiana," confirmed the 22nd of September, 1810, three hundred and fifty-six arpents to Louis Labeaume, agreeably to the aforesaid concession, and that on the 14th of June, 1811, they issued their certificate, number 982, for that confirmation under the fourth section of the act of Congress, approved the third of March, 1807, entitled "An act respecting claims to land in the Territory of Orleans and Louisiana."

It is further certified that the Honorable A. H. H. Stuart, Secretary of the Department of the Interior, decided on the 25th of July, 1851, that those claiming under Labeaume are entitled to a patent for the land according to Soulard's survey and Labeaume's possession, and that he directed the necessary survey to be made, and a patent to be issued in conformity therewith. It is further certified that the lines of the said Soulard survey have been retraced in conformity with the decision referred to, as appears from the accompanying plat and description of survey numbered No. 3333, authenticated and returned this day to this office by M. Lewis Clark, surveyor general for Illinois and Missouri.

Now, therefore, be it known that Louis Labeaume, or his legal representatives, is entitled to receive a patent for three hundred and thirty-nine and 68-100 acres, equal to 399 30-100 arpents of land, the contents of said survey No. 3333, which is situated in township No. 45 north of the base line of range 7 east of the 5th principal meridian, in the State of Missouri.

(Signed) ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

To JUSTIN BUTTERFIELD, Esq.,
Commissioner of the General Land Office, City of Washington.

(Here follows map marked page 69.)

Patent to Labeaume's representatives.

Patent to Labeaume's representatives.

The United States to all whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office a patent certificate, No. 1249, of the recorder of land titles at St. Louis, Mo., whereby it appears that on the 15th of February, 1799, Zenon Trudeau, lieutenant governor, made a concession of about 360 arpents of land to Louis Labeaume, and that on the second day of March, of the

same year, it was surveyed by Antoine Soulard to the amount of 374 arpents, situate three miles north of the town of St. Louis, and that the board of commissioners appointed in pursuance of the fifth section of the act of Congress approved March 2nd, 1805, entitled an act for the ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana, confirmed on the
70 22nd day of September, 1810, 356 arpents to Louis Labeaume, agreeably to the aforesaid concession; and that on the fourteenth day of June, 1811, they issued their certificate No. 982 for that confirmation, under the fourth section of the act of Congress approved the fourth day of March, 1807, entitled an act respecting claims to land in the Territory of Orleans and Louisiana; and whereas it appears from the aforesaid patent certificate that pursuant to the decision of the 25th of July, 1851, of the Secretary of the Interior, those claiming under Labeaume are entitled to the land, according to Soulard's survey and Labeaume's possession, and that the lines of the said Soulard survey have been retraced in conformity with the decision referred to, as appears the plat and transcript of survey No. 3333, which accompany said patent certificate; the said plat and transcript of survey having been authenticated by M. Louis Clark, surveyor general of Illinois and Missouri, under date of the 26th of February, 1852, which survey, No. 3333, contains 339 68-100 acres, being situated in township 45, &c., and which plat is described as follows, to wit: Beginning at the stake set on the right bank of the Mississippi between high and low water mark, &c. The description here follows, same as in Milburn's return, &c., &c.

Remarks of the surveyor.

The survey of this tract was made by A. Soulard in March, 1799, and recorded in Register "A," arpentage, page 130, a copy of which is attached hereto, represents the area thereof to be 374 arpents, there being 25 30-100 arpents less than found by this survey. But as no notes of Soulard's survey describes the meanders of the Mississippi River and of the Rocky Branch, the former bounding the tract on the east, and the latter, in part, on the north, there are, therefore, no means to ascertain whether the difference or excess in the area of this survey over that given by Soulard is owing to a miscalculation by said Soulard, or to the subsequent accretion along the bank of the Mississippi River since Soulard's operations. This accretion appears to be rapidly advancing. That portion of the tract eastward of the high bank, shown topographically on the foregoing plat, the top of which is designated by the dotted lines "a, b, c, d, e, and f," appears to be the accretion since Soulard's times, and contains about fourteen acres. The following is a copy of Soulard's survey:

Statement of the interferences of certain surveys of lots in 1833, in the name of Louis Labeaume.

1st. Survey No. 1487. Concession of 2 by 40 arpents to widow Hebert, survey of same certificate, May 23d, 1772, by Piernas, lieutenant governor, &c., and Austin Dunald, a surveyor duly appointed by said Piernas; confirmation to widow Hebert's representatives by second section of the act of April the 29th, 1816.

2nd. Survey No. 1486. Concession of 2 by — arpents to Dubruisseau's representatives, Livre Terrien, No. 2, 39, 67, and 68, Bates' Minutes, page 12, and his decision, page 4.

3d. Survey No. 3306. Concession of 3 by 40 arpents to widow
71 Dodier, survey and certificate as above; confirmation to widow

Dodier or her representatives by first section of act of 4th of July, 1836, Livre Terrien, No. 2, pages 58, 67, and 68.

4th. Survey No. 1385. Concession of four by forty arpents to Dubruisseau, surveyed and certified as above; confirmation to Dubruisseau's representatives by second section of act of the 29th of April, Livre Terrien, No. 2, page 37, 69, and 68.

5th. Survey No. 1410. Jacques Clamorgan, assignee of Ortiz, under Gabriel Dodier, concession of 2 by 40 arpents to Gabriel Dodier, surveyed as above; sale by the widow of Gabriel Dodier to John B. Ortiz, the 10th of January, 1810; sale by Ortiz and wife to Jacques Clamorgan the 4th of April of the same year; confirmation to Gabriel Dodier's legal representatives by the act of the 12th of June, 1812, Livre Terrien, No. 2, page 35, 67, and 78.

6th. Survey No. 1484. Concession of 3 by 40 arpents to Paul Gregoire Kiercereau; survey and certificate as above, &c., &c.

7th. Survey No. 1486. Concession to Joseph Taillon of 1 by 40 arpents; survey and certificate as above; confirmation to Joseph Taillon's representatives by second section of act of April the 29th, 1816; Livre Terrien, No. 2, page 33, 67, and 68, Bates' Minutes, page 12, Decision Book, page 3.

8th. Survey No. 380, of St. Louis lands.

A piece of vacant land of 19 88-100 acres, designated and set apart to the public schools of the city of St. Louis, by the surveyor general, on the thirty-first day of March, 1845, pursuant to the acts of Congress of June 13th, 1812, May 26, 1824, and January 27, 1831, and the instructions of the Commissioner of the General Land Office, the 15 of January and 18 of February, 1839.

9th. Survey No. 1482, general series. Concession of 1 by 40 arpents to John Baptiste Sarpey, survey and certificate as above, by Durald & Piernas; confirmation to J. B. Sarpey's representatives, by the second section of the act of April 29, 1816; also confirmation by the act of June 13th, 1812, &c., &c., &c.

10th. Survey No. 1481. Concession of 1 by 40 arpents to Vieri, survey and certificate as above; confirmation to Vieri's representatives, by the act of 20th of April, 1816.

11th. Survey No. 1480. Concession of 1 by 40 arpents to Moreau, survey and certificate as above; confirmed to Moreau's representatives by the act of the 29th of April, 1816, &c., &c.

12th. Survey No. 1479. Concession 1 by 40 arpents to Livette, survey and certificate as above; confirmation to Livette's representatives by act of the 29th of April, 1816.

13th. Survey No. 734. Notice of a claim by John Mullanphy to *to* 80 arpents of land, as an improvement right under the assignment of Baptiste Provouchere; deed from Baptiste Provouchere to John Mullanphy, dated August 26th, 1805; confirmation to John Mullanphy, assignee of Provoucher, June 1, 1811, by the old board, as per certificate No. 734, under the second section of the act of the 3d day of March, 1807; minutes of the old board, Book No. 4, page 197, No. 5, page
72 165, and certificate No. 734. Now, know ye, that there is, therefore, granted by the United States unto the said Louis Labeaume, or his legal representatives, and to his or their heirs, the tract of land as described in the aforesaid No. 3333, saving and reserving any valid adverse right which may exist to any part thereof. To have and to hold said tract of land according to said survey No. 3333, unto the said Louis Labeaume, or his legal representatives, and to his or their heirs and assigns forever, with the saving and reservation aforesaid.

In testimony whereof I, Millard Filmore, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, this 25th day of March, 1852.

By the President:

MILLARD FILMORE.
By ALEX. McCORMICK,
Secretary.

John Wilson, acting recorder of the General Land Office, recorded vol. 11, page 150, and—

(Here follows map marked page 72.)

13th. United States survey No. 2974, for Louis Labeaume, as follows:

United States survey No. 2974, for L. Labeaume.

Plat and description of a survey of 356 arpents of land, equal to 302 85-100 acres of land, confirmed to Louis Labeaume in his own right, situate in township No. 45 north of the base line, of range No. 7, east of the 5th principal meridian, surveyed under instruction dated "surveyor's office, St. Louis, 2d of May, 1833." Begin at a post set for a corner on the bank of the Mississippi River, eastward of the east end of a ditch dug many years ago, on the south line of this survey, from which post the northeast corner of a stone house bears south 75 degrees 45 minutes west, 129 links distant, and a red oak, 10 inches in diameter, bears north 88 degrees west, 98 links distant; thence meander up the west bank of the said river between high and low-water mark, north twenty-three degrees west, 17 chains 28 links, to the northeast corner of a steam saw-mill, and in all this course 30 chains 95 links; thence north thirty-four degrees, west 25 chains; thence north twenty degrees, west 13 chains to the bank of the Rocky *R*anch, near its mouth; thence meander up the branch with the general course thereof, (the branch to be as in the former survey, the boundary between this tract and that of Rufus Easton, under Gabriel Cerre, No. 2042,) west four chains fifteen links; thence north fifty-four degrees, west 3 chains forty links; thence south fifteen degrees fifteen minutes, west four chains thirty links, crossing the branch three times in this distance on this course; thence south eighty degrees thirty minutes, east 2 chains five links; thence south 3 chains 50 links; thence west three chains, crossing the
73 twice; thence south twenty-five degrees thirty minutes west, 3 chains 88 links, crossing the branch once; thence south 34 degrees E., 4 chains, crossing the branch three times; thence west 3 chains 21 links to a point in the branch, having crossed the branch once; south 25 degrees east, two chains; thence south forty-five degrees east, 3 chains 33 links, crossing the branch once; thence south forty-eight degrees forty-five minutes west, 3 chains 80 links, to a point at the intersection of the road and the middle of the channel of said branch, which is a corner of said survey, but being in the road and rocky, cannot set up a post; from said corner, a white oak, six inches in diameter, bears south 68½ west, fifty-seven links distant, and a red oak, five inches in diameter, bears south forty-four degrees east, ninety-eight links distant; thence south fifteen degrees thirty minutes east at 5 chains 24 links; intersect the north line of widow Hebart's survey, No. 1847, being the north boundary line of St. Louis common fields, where set a post 44 chains

49 links south, 75 degrees fifteen minutes east, from the corner of a New Madrid location in the name of John Brooks, being survey No. 2541, from which post a red oak, three inches in diameter, bears south seventy-eight degrees fifteen minutes west, forty-one links distant, and red oak, three inches in diameter, bears north 12 east, twenty-seven links distant, at 10 chains 5 links, which is the whole length of the line; intersect the old ditch which is in part the northern line of this survey, where set a post for corner, near an old stone found lying on the ground, not set in, (probably the old corner stone,) from said post a sycamore, six inches in diameter, bears north 85 degrees east, forty links distant; thence along said old ditch being from this corner westward, as far as it goes. The north line of this survey, south 74 degrees 30 minutes west, 31 chains 27 links, set a post for corner of this survey, from which a red oak, six inches in diameter, bears north 72½ degrees east, twenty-seven links distant, and a red oak, five inches in diameter, bears south 32½ degrees west, thirty-five links distant; thence south fifteen degrees 30 minutes east, along a new line, the western boundary of this survey, 46 chains 95 links, set a post for southwest corner, from which white oak, five inches in diameter, bears south 42½ east distant; thence north seventy-four degrees thirty minutes east, along the south boundary line of this survey, forty-nine chains twenty-eight links, intersect the east boundary line of the St. Louis common fields and set a post there in the old ditch, which is corner to the survey No. 2571, of a New Madrid location of 160 acres, under certificate No. 184, in the name of Henry Peroux, or representatives, under Francis Hamelin, from which corner post a sycamore, fourteen inches in diameter, bears south 74 degrees 30 minutes west, five links distant; thence continue said line on said course along said ditch to the end of it, and further to the beginning corner of this survey, making this whole south boundary line 60 chains 28 links.

Surveyed on the second and third day of May, 1833.

JUNE 8th, 1833.

JOSEPH C. BROWN, *D. S.*

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SURVEYOR'S OFFICE,
St. Louis, 14 *December*, 1837.

This survey, No. 2974, on pages 114 and 115, is this day approved as being conformable to the confirmation by the old board of commissioners, (certificate No. 982;) but in approving the said survey no importance is attached to the words "between high and low-water mark." The actual point called for in running to the Mississippi and meandering it are more definite, and the river boundary thus defined is the one approved.

DANIEL DUNKLIN,
Surveyor General.

The defendants objected to the admission of said survey No. 2974 in evidence, for the reason that it was incompetent and irrelevant evidence, having been annulled by the new survey No. 3333; but the court overruled said objection and admitted survey 2974 in evidence, and defendants then and there excepted.

Patent certificate No. 1162, dated May 1, 1841, as follows:

Patent certifitate.

Date of patent certificate.	No. of patent certificate.	Name of grantee, and remarks.	No. of survey.	Arpens.	Acres.	To whom deliv'd.
Dec. 21, 1837	1151	Louis Labeaume, or his legal representatives, near and about the town of St. Louis	2974	356	302. 85	Wm. Chambers.
May 1, 1841	.....	Canceled.—See No. 1162, for same tract, issued May 1, 1841, F. R. Conway, recorder				
.....	1162	Louis Labeaume, or his legal representatives, about and near the town of St Louis, in T. 45 N., R. 7 E. This certificate is in lieu of No. 1151, issued Dec. 21, 1837, which is returned to this office and canceled.—See letter of the United States surveyor of public lands, of March 26, 1841, addressed to this office, on file	2974	356	302. 30	Wm. Chambers.

The defendants objected to the admission of said patent certificate in evidence as incompetent and irrelevant, and for the reason that a new patent certificate had been issued in amendment of all others, but the court admitted the said patent certificate No. 1162, and defendants then and there excepted.

15th. Letter of Huntingdon, dated July 19, 1841, as follows:

Letter of Huntingdon.

GENERAL LAND OFFICE, *July* 19, 1841.

SIR: I have had the honor to receive from you two patent certificates, and the plats of surveys connected therewith, which you enclosed to me for the following claims, viz:

First. Patent certificate No. 1162, & plat for the claim (No. 982) of Louis Labeaume, confirmed by the old board, for 356 arpents.

75 Second. Patent certificate No. 1163, & plat for the claim of Joseph Calve Voralot, in St. Louis, designated in the report of February, 1816, thus: 60 by 180 feet, barn lot, town of St. Louis, possession & improvement twenty years ago. Granted, 60 by 180 feet, to be surveyed.

In the first case (that of Labeaume) I find certain differences between the survey according to the separate plat accompanying the certificate & the township plat in this office, viz:

By separate plat:

The south line is 60.82 chains.

The west line is 47.31 chains.

The line of that part of the N. boundary parallel to the S. line is 31.51 chains.

The line running from the Rocky Branch S. 15 deg. 30 min. is 10.12 chains.

By township plat in G. L. Office:

The S. line is 63.60 chains.

The W. line is 47.60 chains.

The line of that part of the N. boundary parallel to the S. line is 44.10 chains. The line running from the Rocky Branch S. 15 deg. 30 min. is 10.20 chains.

The survey, however, in this case, on the township, appears to include a claim of Joseph Brazeau for four arpents. (Confirmation certificate No. 983.) The surveyor general should furnish a diagram exhibiting distinctly & separately the correct approved survey of each of the claims, (982 & 983,) as also their connection with the contiguous surveys, in order that the same may be attached to the township in this office.

In the second case, that of Brazeau for a lot of 60 by 180 feet; the area of the lot, according to the survey, is much greater than that confirmed.

The north line being 153 feet $3\frac{1}{4}$ inches.
The east " 101 " 5 "
The south " 179 " $4\frac{1}{4}$ "
The west " 80 " 3 "

The report, as stated, represents the lot to be 60 by 180 feet.

The plat of survey accompanying the certificate is headed: "Plat & description of a lot 60 by 180, French measure, as described; but agreeably to the boundary lines called for, said lot is found to be as it is represented by the plat and descriptions, which lot is confirmed to Joseph Brezeau," &c. I find no authority with the papers submitted for such a deviation in the survey, from the size of the lot as given in the report, and therefore the said survey is not recognized as correct by this office.

The above is an extract from fractional townships 44 N., R. 7 E., 5th principal meridian, as certified by Wm. McKee, surveyor, Sept. 6, 1825.

E. G.

76 When an accurate survey is executed for the lot according to the confirmation, there should be returned from the plat & certificate a diagram exhibiting the connections with the adjacent blocks in which lots may be confirmed. A copy of this letter will be sent to the surveyor general at St. Louis, from whom a report will be required in relation to these surveys. The papers, including a letter to you of the 21st ult., from Col. J. O'Fallon, are herewith returned, as that gentleman may desire to retain them until the further action of the surveyor general.

With great respect, your obedient,

(Signed) E. M. HUNTINGTON,
Commissioner.

Hon. JOHN I. CRITTENDEN, Present.

P. S. Enclosed is a copy of my letter to the surveyor general on the subject.

16th. Letter of Richard M. Young, dated March 11, 1847, to F. A. Conway, surveyor general, as follows:

GENERAL LAND OFFICE,
March 11th, 1847.

SIR: G. A. Bird, esq., has brought the attention of this office the case of Esther, a mulatress, or her legal representatives, whose claim for 4 by 20 arpents is entered as No. 70 in the first class of the late board, & confirmed by the act of 4th of July, 1836. Mr. Bird claims, as embraced in that confirmation, the 16 arpent tract south of Labeaume's line, north

of Chouteau, and east of the common field lots, and extending to the river, and has applied for an order to survey that claim. In order to enable this Department to act definitely on his application I request that you will make a full report on the subject.

First. You will be pleased to communicate such data as you may have pertinent to the question of location, accompanied by your decision as to whether the evidence is sufficient to enable you with certainty to determine the true location of this claim of Esther, No. 70, which in a report dated 23rd January, 1814, from your predecessor, is placed in class (3) of cases, the most of which he feared "cannot be properly & definitely located, or are covered by previous confirmations."

Second. You are requested to report the specific designation of each claim that would be affected by the location of this claim. Herewith I enclose for your consideration Mr. Bird's communication of the 29th of January last. You will observe he speaks of a claim of Joseph Brazeau "as lying north of and adjoining the concession to Esther," &c. States that in 1798, Brazeau sells his concession to Louis Labeaume, reserving the four southern 16 arpents; "that in 1816, he conved to Perrie Chouteau the 16 arpents so reserved, stating that he had sold the same to Perrie Chouteau, and been paid therefore before he sold to Labaume, as aforesaid," &c.

77 The only Brazeau claim which is identified on our records, in connection with this case, is the four arpents confirmed to him under No. 983, which it seems is united on the old transcript township plat of 1825, with Labeaume's survey No. 982. On the plat certified and returned here by surveyor general in 1845, Labeaume's survey of 356 arpents appears as No. 2974, without Brazeau's 4 arpents. (See first case in letter from this office to S. G. of 19th of July, 1841.) You are requested to report the reason of the omission of Brazeau's survey No. 983 of four arpents, on the township plat of 1845, and send in a diagram exhibiting its connection and relative position to Labeaume, and to the contiguous surveys. You will also report whether this four arpents claim of Brazeau's (No. 983) is a part, as it is represented to be, of the *the* 4 by 20 Brazeau claim referred to by Mr. Bird; if so, what proceedings, according to your records, were had under the former government, and what have been had under our government in regard to the residue of that claim.

Be pleased to return Mr. Bird's letter with your report.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

R. F. CONWAY, Esq., *Surveyor General, St. Louis, Missouri.*

(The defendants objected to this letter as incompetent and irrelevant as evidence in the cause, and the court admitted said letter as evidence, and defendants then and there excepted.)

Report of Conway of 16th June, '47.

17th. Report of F. R. Conway, surveyor general, of the sixteenth of June, 1847, to the Commissioner of the General Land Office, as follows:

Report of Conway 16th June, '47.

SURVEYOR GENERAL'S OFFICE, ST. LOUIS.

SIR: In compliance with the instructions of Commissioner Hunting ton of the 19th July, eighteen hundred and forty-one, to the surveyor

general at St. Louis, which do not appear to have been attended to, and your instructions of the eleventh of March last, I now propose to report on the claims of Labeaume, Chouteau, Brazeau, and Esther, situated in the upper part of this city.

On account of the great value of the lands, the adverse claims thereto, and the amount of litigation that they have already produced, and are still likely to produce, I have been induced not only to dwell at length on the subject, but also to accompany this report with the evidence which illustrates it, in order that the opinion I am required to give, be the better investigated by you for its final decision. I enclose a full
78 and complete tran'cript from the records and papers in the recorder's office, of the following four claims. To each there is attached a translation of such parts as are in the French and Spanish language:

1st. Letter "A," of the concession of four by twenty arpents to Joseph Brazeau, which was subsequently merged into a concession of 306 arpents to Louis Labeaume, and the proceedings of the old board under certificates No. 982 and 983.

2d. Letter "B," of the concession of four by twe*n*ty arpents to Esther, which was confined by the act of the 4th July, 1836, under decision No. 70, of the late board.

3d. Letter "C," of the concession to Peter Chouteau, of the vacant space between Labeaume and Roy's tracts, the Spanish surveyor of 133 arpents, and the confirmation of 93 arpents one perch, by the old board certificate No. 671.

4th. Letter "D," of the concession to Antoine Roy, of eleven arpents and fifty-eight perches, confirmed by the old board certificate No. 181.

5th. Letter "E," a copy of New Madrid certificate, No. 184, (160 arpents for Henry Peroux, under Frances Hamlin,) of its location upon a part of Peter Chouteau's claim, of the survey of the New Madrid land, and of the protest of Peter Chouteau against it.

6th. Letter "F," a certified copy of the deed dated 9th May, 1798, from Joseph Brazeau to Louis Labeaume, of the sale of his concession of four by twenty arpents, with the reserve of four arpents.

7th. Letter "G," a certified copy of the deed of sale by Esther to Jacques Clamorgan, of her concession of four by twenty arpents, (see B,) dated the second of September, 1794; and a certified copy of the deed of sale of the same land by Clamorgan to Peter Chouteau of the 16th November, 1810.

8th. Letter "H," a copy of the U. S. survey, Nos. 982 and 983, in a single tract of 360 arpents, including the confirmation of 356 arpents to Louis Labeaume, and of the four arpents to Brazeau, the survey executed in November, 1817.

9th. Letter "I," a copy of the survey 2974, of the confirmation of 356 arpents to Labeaume, not including the confirmation to Brazeau, executed in May, eighteen hundred and thirty-three, with a document attached thereto.

10th. "K," a copy of the same survey No. 2974, but showing its connection, made in 1838, with the individual lots of the common fields of St. Louis.

11th. Letter "L," a diagram showing the original Spanish survey of Labeaume, Chouteau, and Roy, the U. S. survey of Labeaume and Chouteau, the position of the unsurveyed claims of Brazeau and Esther, a part of the New Madrid location under certificate No. 184, and some other data illustrative of this report.

12th. Letter "M," a plat of the U. S. survey of such of the claims in question as are run out and their connection with the adjacent surveys.

13th. Letter "N," Mr. Bird's letter to you, of the 29th of January last, that accompan'ed your letter to me of the 14th of March last, and which I am required to return.

79 I will now begin with the investigation of the claims.

Transcript A.—Joseph Brazeau and Louis Labeaume.

The concession to Joseph Brazeau, dated the 25th of June, 1794, is for twenty arpents along the Mississippi River, bounded south by the land of the mulatress Esther, and north by the vicinity of Rocky Branch, by four arpents wide to the west. This land was sold on the 9th of May, 1789, by Brazeau to Labeaume, reserving four by four arpents. Louis Labeaume, in a petition, (not dated,) asks for 360 arpents, including the land acquired from Brazeau; that is, twenty arpents west of the Mississippi River, by sixteen arpents front along that river, and the complement in that space, between Rocky Branch and the Mississippi, which was granted on the 15th of February, 1799, by the lieutenant governor. On the second of March, 1799, the tract was surveyed by the Spanish surveyor general, and 374 arpents included therein by Labeaume, and recorded in Book , page . A notice of this claim was filed with the recorder, on the third of September, 1806, before the board appointed under the act of the second of March, 1805. Louis Labeaume claims 374, and produces in evidence the concession to Brezeau of four by twenty arpents, his own concession of 374 arpents, including the said four by twenty arpents; the survey of the said 374 arpents, and the certificate by Zenon Trudeau of the sale of the four by twenty arpents, with the exception of the four by four arpents. On the 22d of September, 1810, the board confirmed to Louis Labeaume 356 arpents, and four arpents to Joseph Brazeau, agreeable to the concession to Louis Labeaume, and, as respects the four arpents, agreeable to the reserve made in the sale from Joseph Brazeau to Louis Labeaume, recorded in Book "C," page 339, of the recorder's office.

From the evidence, it is inferred that the Brazeau tract of four by twenty arpents is included within the survey of 374 arpents for Labeaume. In this claim, before the board, Labeaume states that the concession of 374 arpents embraces that of four by twenty to Brazeau. He goes further; he abandons the concession of four by twenty, and claims immediately that for 374 arpents; that is, the lands within the bounds of the survey by Soulard; and the board, acting thereon, confirmed 356 arpents to Louis Labeaume, and four arpents to Joseph Brazeau, according to the concession to Labeaume, as respects the four arpents, agreeably to the reserve of four arpents, &c. The deed of sale embracing this reserve, (of which Document "F" is a copy, obtained from the clerk of the St. Louis circuit court,) it will be remarked, is not recorded with the evidence in the case, but only the certificate by the lieutenant governor of its having been executed; nor was the deed produced in support of the claim before the board; but as the certificate mentions four arpents reserved, the board (in the absence of the original document or its record) decided that the confirmation should be agreeable to a reserve made in a deed of sale, &c. They did not

80 by this provision settle a question of locality, for this was already done by their including the land in the concession to Labeaume; but they intended to secure to Brazeau the benefit of the clause of this deed which shows that the reserve consisted of four square arpents, or sixteen superficial arpents, at the south part of the tract of four by twenty. The Spanish survey of Labeaume is shown on Diagram "L"

by the lines *a*, *g*, *hi*, *k*, *kl*, *la*; the lines *ab*, *be*, *cd*, *da*, within that survey, purport to represent the original concession to Brazeau by four by twenty arpents; and the lines *ab*, *be*, *ef*, *fa*, at the south thereof, exhibit the four arpents reserved for Brazeau. The lines from the point *a*, at the southeast corner of Labeaume, is reserved to *b*, the twenty arpents in front, which are the extent to vicinity of branch. According to the concession, they hardly reach that limit; and to remove further south the south boundary of Brazeau, would still be a greater deviation from the terms of the grant.

Although it is not the object of this report to indulge in suppositions, it may be reasonably believed that, in asking an extension of sixteen arpents to the west of Brazeau concession, Labeaume intended to avail himself of the sixty four arpents west of the reserve by Brazeau, shown by the lines *ab*, *bg*, *g*, and = =, on Diagram "L," and not the space *ki*, *ih*, *hz*, *zk*, on the west of his survey; which latter space would have fallen therein had he taken the line *fe*, (the north boundary of the Brazeau reserve,) prolonged to and for his southern boundary. Had he done this, he would have carefully avoided before the board the mention of the fact of the inclusion of Brazeau's land into his own, and the commissioners would not have done him (and chiefly to Brazeau) the injustice of blending the two tracts into one. The concession to Brazeau calls for its southern boundary the land of Esther; that its south side shall be bounded by the grant to the free mulattress Esther. It also says, "a tract of land situated beyond the foot of the small mound called the Grange de Terre," and also twenty arpents in length, which are to begin from the foot of the hill upon which stands the Grange de Terre, and which means that the land does not begin at the foot of the Grange de Terre, but at the end of the declivity on the hill on which it rests.

By examining the claim of Esther, (Transcript B,) called, as aforesaid, the southern boundary of the concession to Brazeau, it will be seen that the tract is described by the lieutenant governor as being situated between the mound called La Grange de Terre and the banks of the Mississippi, as appears by the plat. The plat here referred to is a part of the concession, as recognized by Mr. Trudeau, and is used by him to establish the position of the land. It shows that this land was situated and granted as asked for; *i. e.*, between the Grange de Terre and the river, and that about 3½ arpents of it projects farther north from that outside landmark. If the Grange de Terre had bounded the tract on the north, then the tract would not have been between it and the river, but south thereof; and, in this supposition, the concession could be explained but by a contradiction in terms. In addition to the foregoing information, I am required, by the instructions of the 11th of
81 March, to report the case of the omission of the Brazeau survey on the township plat of 1845, and also the proceedings under the former government, and ours in regard to the residue of that claim.

The action of the former government in relation to the residue of the Brazeau claim, (sold to Labeaume,) being fully explained by the document "A," it will be now only to comply with the remainder of the instructions. The omission of the Brazeau claim on the township plat of 1845, is owing to the fact that at that date there was no survey thereof.

Document "H," a plat and description of survey Nos. 982 and 983, for 360 arpents in a single tract, (or two tracts in one, as says the text,) shows that the confirmation of four arpents to Brazeau was run out in 1817, according to the decision of the board, as it was then understood by the surveyor general. It appears that a return of these surveys was made on the 24th of October, eighteen hundred and thirty-two, to the

recorder of land titles, who refused to issue his patent certificate thereon. See the reason thereof in the copy of the instructions of 2d May, eighteen hundred and thirty three, to Joseph C. Brown, attached to Document "I," which is a copy of the plat and description of survey No. 2974, for 356 arpents, the confirmation to Labaume. The survey which cut off the four arpents of Brazeau was approved on the 14th of December, eighteen hundred and thirty-seven, by Surveyor General Dunklin. Document "R" shows that this survey, No. 2974, was connected with the lines of the common field lots, and as such approved by the surveyor general, Milburn. A plat and description was subsequently returned to the recorder, and a patent certificate issued by him, No. 1262, which was in part the subject of the Commissioner's letter of the 19th July, eighteen hundred and forty one, to which these explanations were an answer. The Brazeau tract seems to have been dormant since it was severed from the collective survey of 1817.

Transcript "B."—Esther claim of four by twenty arpents.

The northern part of the land called for in this petition is to be situated between the mound called La Grange de Terre and the banks of the Mississippi, and to that petition is attached the plat already referred to, showing the tract and its relative position to the objects called for in the delivery of possession which follows the petition. The lieutenant governor describes the land as lying between the Grange de Terre and the banks of the Mississippi, and to elucidate his views he adds: "As appears by the plat;" and in his formal concession Mr. Trudeau uses the same description. From document "C" and "G," it appears that Esther, on the second day of September, seventeen hundred and ninety-four, sold her land to Clamorgan, and that on the tenth of November, eighteen hundred and ten, Pierre Chouteau acquired it of Clamorgan; but these deeds have but little bearing on the subject. Its confirmation had been refused by the old board on the 22d of
82 August, eighteen hundred and six, and on the 17th of February, eighteen hundred and nine; but the tract having been recommended for confirmation on the eighth of November, eighteen hundred and thirty-three, by the late board, under their decision (No. 70) it was confirmed to Esther or her legal representatives, by the act of Congress of the 4th of July, eighteen hundred and thirty-six. It does not appear that any attempt to survey it was made since the passage of that act by this office, although applications therefor are on file.

The concession in this case being older than any of the adjoining or interfering grants, it was, as a matter of course, bounded on the northern, southern, and western sides by the King's domain; the east boundary being the bank (ecore) of the Mississippi River, and the width running four arpents westward; these two latter boundaries are settled. It seems that the two others (southern and northern) can be ascertained also from the words of the petition, delivery of possession, and concession. They state that the land is between the Grange de Terre and the river; that is, as already mentioned in the observations on the proceeding case, that both ends of the land project from the said object, which is thereby seperated from the river.

The petition and concession state it is in the northern part of the tract that is between the Grange de Terre and the river; by which is meant that the projection of the land beyond it is shorter on the north than on the south side. The plat represents the intended proportion, by dividing the western line of that plat in twenty parts (the number

linier or plats granted) it will be seen (vide plat in translation) that from a point opposite the middle of the parallelogram intended for the Grange de Terre there is a distance of three and a half arpents to the north-western angle of the tract. Then it is on the northern side that we are likely to found one of the lateral boundaries; and if this be ascertained, the opposite line will easily be found by running twenty arpents south from the point identified north.

Returning to Document A, I, we find that in the delivery of possession by Zenon Trudeau, of the twenty by four arpents asked for in 1794, one year after the grant to Esther by Brazeau, and in his grant the lieutenant governor first describes the land; and then to procure more particularly its south boundary, most probably for the purpose of avoiding conflicts, he describes in one instance that it shall, and in the other that it must, be bounded by the land of Esther. If the positive assurance from the evidence in document "A," that the consession to Brazeau was subsequently merged into that of Labeaume is correct, and that Labeaume had his tract of three hundred and seventy-four arpents measured out; accordingly that survey shows that Labeaume conformed to the strict orders of the lieutenant governor in the Brazeau grant by running his south boundary at the distance of about four arpents from the centre of the mound, (see Diagram L & M,) as indicated on the plat of Esther's land. As a matter of course, the line so run became the common line to the tracts of Esther & Labeaume; its position cannot either be mistaken or misconstrued. In his prudence or for his convenience,
83 Labeaume dug a ditch along it for about the distance of seven arpents westward from the river. The ditch is shown on the survey of three hundred and seventy-four arpents, is laid down on the Spanish survey of Peter Chouteau, (see Document C,) was followed by Mr. Brown, in eighteen hundred and seventeen, in his running survey Nos. 982 and 983, in a single tract, and was finally used by him as the south boundary of Labeaume for his survey in eighteen hundred and thirty-three and resurvey in eighteen hundred and thirty-eight, for the confirmation of 356 arpents under survey No. 2974. Having thus ascertained the north boundary of Esther's tract by actual surveys on the ground, made by the Spanish and United States authorities in conformity with what I conceive to be the requirements of her concession, and that of the subsequent grants adjoining to the north thereof, I have laid down the unsurveyed claims of Esther on Diagram "L," by beginning at "A," the southeast corner of Labeaume; thence along his south boundary four arpents to "B;" thence (meeting the Grange de Terre at about four arpents) twenty arpents to "V;" thence four arpents to "W;" thence along the bank of the river to "A," so that the south boundary runs into the lands of Antonie Roy and John Mullanphy, under Egliz. It will be perceived by Diagram M of the United States survey that the distance left by Labeaume between the centre of the Grange de Terre and his south boundary, which, agreeably to the plat of Esther, would be 3½ arpents, was found by actual survey to be 4½, a slight difference when all circumstances are duly considered. Although the north boundary of Esther appears so far to be correctly ascertained, I have been at pains to examine whether there is any data in relation to her south boundary in the written evidence of the claims to the south thereof, viz: The claim of Antoine Roy of 11 arpents 58 perches, granted 7th of July, seventeen hundred and ninety-seven; Jacinth Egliz, 12 arpents 94 perches, granted 22d October, seventeen hundred and ninety-nine; Emiliana Yosti, 5 arpents 50 perches, granted 2d September, 1799; Antoine Soulard, 7 arpents 80½ perches, granted 5th January, eighteen hundred;

Jacque Clamorgan, 7 arpents 38½ perches, granted 28th November, seventeen hundred and ninety-nine.

But I found nothing but what is related in Roy's transcript (Letter D) of the protest of Clamorgan against the survey of the concession to Roy, and of the decision of the lieutenant governor of Clamorgan under Esther, so far as it interfered in giving the preference to Roy. Clamorgan was willing to give one arpent front of his land by convenient depth for the benefit of Roy's mill. That donation, which was, no doubt, intended to be the south end of Clamorgan's tract, is shown on the plat by the space in Roy's claim within the letters *g*, *w*, *x*, *y*.

In the proceedings of the late board upon the Esther claim, I have carefully examined the deposition made in eighteen hundred and thirty-three, (above forty years after the grant,) of Reve Dodier and Baptiste Riviere, Baptiste Riviere dit Becamie. Dodier says that the fence
84 of Esther's field was running this side (nearest St. Louis) of where now lives Mr. Mullanphy; that is, along the southern line of the tract of John Mullanphy, under Egliz. The vague statement of Riviere, as to the locality of the land, does not much improve the data afforded by other witnesses, and, under these circumstances, Dodier's testimony of Esther's fence running near or along the south side of Egliz should not, in my opinion, be considered as an evidence of her south boundary, in contradiction of the plainer evidence we have of the northern boundary, which is based upon the action of public officers, whose duty it was to decree, define, and establish it.

Document "C."—Pierre Chouteau.

Pierre Chouteau, on the fifteenth of October, seventeen hundred and ninety-nine, petitioned for a strip of land which, in consequence of the annulment of the lieutenant governor of the pretentions of Jacques Clamorgan thereto, had become vacant, as expressed in Manuscript "D" of the Roy claim. The land asked for was bounded north by the line of Mr. Labeaume, south by the line of Mr. Roy, east by the Mississippi, and was to run west six arpents therefrom. The petition, which does mention that the area of the tract can be determined only by a survey, was acted upon the same day by the lieutenant governor, who granted the land asked for; and on the tenth of March, eighteen hundred and three, it was regularly surveyed by Antoine Soulard, as containing 133 arpents. The claim thus surveyed is shown in Diagram "L" by the yellow lines *as*, *ap*, *pg*, *gd*. It was presented to the board of commissioners on the 25th January, eighteen hundred and nine. The evidence produced was the petition, concession, and survey already mentioned. Claimant renounced all claim in 30 arpents 99 perches, which interfered with the land heretofore surveyed, leaving the quantity claimed 93 arpents 1 perch. On the seventeenth of February, eighteen hundred and nine, the board confirmed to Pierre Chouteau 93 arpents and 1 perch, and ordered that the same be surveyed, so as not to interfere with the field lots of the little prairie adjoining the town of St. Louis; and in their certificate No. 671, issued on the 29th of May, eighteen hundred and eleven, the commissioners, to the words above identified, add the explanation, by virtue of a concession or order of survey from Don Carlos Delassus.

The part abandoned by Mr. Chouteau of his original concession, as interfering with the field lot of St. Louis, is shown in Diagram "L" by the triangle *as*, *sr*, *so*. The tract was surveyed by the United States on the 2d of April, eighteen hundred and seventeen, under No. 671, as containing 93 arpents 1 perch. (See lines *gp*, *pr*, *st*, *yu*, *ug*, on Diagram

L.) On the 4th of November, eighteen hundred and twenty-two, the return of it was made to the recorder, who, as it appears from the registry in his office, issued thereon patent certificate No. . The survey thus made of this confirmation does, as required, not interfere with the eastern part of the common field lots, but it has not been extended to
85 the southern line of Labeaume; this left the space *a*, *r*, *st*, *tu*, *ua*, vacant, or rather open for the introduction of new claims, inasmuch as that of Esther was then reconfirmed; although the land covered by it was reserved, or any other disposition, by the United States by the act of the 15th of January and 3d of March, eighteen hundred and eleven, and the seventeenth of February, eighteen hundred and thirteen. It will be seen by Document "E," that in consequence of the curtailment of the Spanish survey of Chouteau, a location was on the 7th of April, eighteen hundred and seventeen, (five days after the U. S. survey by Chouteau,) made upon the space left vacant thereby, under certificate No. 184, issued for 160 acres to legal representatives of Henry Peroux, under Frances Hamelin, in lieu of an injured lot of one arpent in the town of New Madrid, in pursuance of the New Madrid act of the 17th February, eighteen hundred and fifteen. The survey No. 2571 of this location was made in March, 1822, five years after the location, and the return issued to the register in January, eighteen hundred and twenty-four, two years after the survey, notwithstanding the protest of Pierre Chouteau of the 24th June, eighteen hundred and eighteen, against that location on file here, with the papers in Piroux case, and a copy of which is in Document "E." Before the board Chouteau, the claimant, renounced all claim to 39 arpents and 99 perches, which interfered with land heretofore surveyed, leaving the quantity at present claimed 93 arpents and 1 perch. Mr. Chouteau states in his protest "it is not for me to account for the phrase or mode of entry adopted by the board, in recording this abandonment—the act is theirs and not mine." He declares that before the commissioners he did abandon only so much of his claim "as might be found to interfere with the front of the field lots"—that the object of the abandonment was to avoid a contest with any of the holders of field lots to the west of his tract; and so goes on with observations worthy of careful perusal and attention. The confirmation and the certificate of the board make this restriction alone the interference of the field lots, because there was no room or necessity for any other. The words "land heretofore surveyed," can point only to the surveys of those field lots made by Martin Duralde in 1770 or '71 and '72, under the authority of the Spanish governor, and recorded in Livre Terrien No. 2. They cannot refer to the land claimed by Esther, because the commissioners in confirming to Chouteau had just decided against her claim, which decision was indeed the cause of Chouteau's confirmation. Besides there was in fact no survey of Esther's land, for if the plat in her petition was sufficient to illustrate its position, and was used for that purpose, still it does not bear the character of the plat of a regular sur*u*vey, executed by the surveyor general or his deputies, subsequent to the grant upon the order of the lieutenant governor. These words cannot allude to the surveys of Roy and Labeaume, these being the very boundaries of Chouteau; nor can they relate to the surveys of concession not recorded, because the only jurisdiction of the board upon claims of this nature was their rejection. How the forty arpents (38.99) were cut off from the Spanish survey, the proceed-
86 ings of the commissioners do not show. The section it seems was not made by the surveyor in their employ, in consequence of their order to that effect, nor do the plats of that surveyor (Silas Bent)

in this and the recorder's office leave any vestige of the transaction. The surveys referred to of the field lots are not platted in Livre Terrien. They describe the lots merely. There was, in eighteen hundred and nine, when the board acted on Chouteau's claim, as far as I can learn, no connecting plat of the outlines of the common fields of St. Louis, and the Spanish plat of Chouteau not calling for or showing its east line, it follows that the relative position of this line with the western line of Chouteau was not then ascertained. This led to the belief that either the calculation by which the forty arpents here cut off was erroneous, or it was then supposed that the front line of the common field run further east than whence the United States survey of eighteen hundred and eighteen established it. The area of the Spanish survey (133 arpents) is not understood; or rather the tract does not contain an area above that quantity. The length of the western line is eighteen and $\frac{3}{4}$ arpents; that of the southern is 6; and that of the northern is seven arpents. By allowing a continuous width of seven arpents to compensate for the outside curve of the river, the contents would be one hundred and thirty-one and $\frac{1}{4}$ arpents. To ascertain the fact, an accurate calculation of the *and* embraced in the Spanish survey has been made, and it produced the following results: Survey No. 671 contains 79.12 arpents; that part thereof between it and Labeaume, (N. Madrid location 14.10; and the triangle *o*, *s*, *r*, of Diagram L, abandon*doned* to the field lots, 18.24; total 111.46, which is equal to 131$\frac{1}{2}$ arpents.) Then as there is more land in the Spanish survey than there is written on its face, the question, it seems, is, whether the confirmation to Chouteau is to be governed by the words used by the commissioners. 93 arpents 1 perch to be surveyed so as not to interfere with the common field lots of the little prairie of St. Louis, or by the calls of the concession between Roy's and Labeaume's land, with the exclusion of the interference in question. In the first hypothesis out of one hundred and thirty-one arpents, (the actual quantity,) Chouteau gets 93 arpents; 21$\frac{1}{2}$ arpents (18.24 arpents) are interfered with by the field lots, and there remains sixteen and $\frac{1}{2}$ arpents which are neither interfered with by these lots nor by the other lands "heretofore surveyed," or included in the survey of Chouteau. If this curtailment of 16$\frac{1}{2}$ arpents be made on the south or on the north of the Spanish survey, the confirmation in this case does not agree with the calls of the concession by virtue of which it is made, and deprives it of one of the intended boundaries; beside what is to be done in order that the sixteen and a half arpents may become interfered with by the lands heretofore surveyed, if they are taken from Chouteau's survey. In the second supposition, to wit, that the calls of the concession should control the survey, regardless of the specific quantities confirmed and deducted, then the one hundred and thirty-one arpents are to be thus divided: Chouteau will receive 109$\frac{1}{2}$ arpents (the 79.12 acres in
87 the survey No. 671, and the 14.10 acres in the New Madrid location,) and abandoned to the common fields 21$\frac{1}{2}$ arpents, (18.24 acres in the trinagle *d*, *e*, *r*.) This would satisfy the claim under all its aspects. It would not interfere with the land heretofore surveyed, as said in the abandonment; it would not interfere with the field lots of the little prairie, as required in the confirmation; and its survey would preserve the integrity of the calls of the concession under which the confirmation was based, as set forth in the commissioner's certificate. Also this would remedy the error caused by a random estimation of the quantity of interference, and moreover be in accordance with the principle, that the survey of a private claim should be extended to the natural objects called for in the concession, regardless of the specified quality;

were this proceeding, as in the case now investigated, might be adopted without injury to the adjoining valid claims.

I will suppose that in this same case of Chouteau, that had the interference with the field lots been stated below its actual amount, instead of being actually above it, would this inverse error have given him the right to transcend the lines of either Roy or Labeaume, and make good the deficiency from their land? I think not. And, if so, is he not entitled to the benefit of the principle in the contrary event? And here I beg a reference to the instructions of the 7th of July, eighteen hundred and forty-five, from the Commissioner of the General Land Office to the surveyor general, to show how the principle just set forth was respected in relation to the claims of Soulard, (survey No. 1333,) although under circumstances less formidable than in this case.

In conclusion, I will remark that if it be said that the commissioners disregarded Chouteau's survey, and the proof this be deduced from the omission of the notice of it in the confirmation, in return it may be asked, "Why did they use it in the deduction of the interference with the lots?" and also that this confirmation was barely 93 arpents, without reference either to survey or concession. Why did they state, in their certificate of that confirmation, that it was "by virtue of a concession or order of recovery from Don Carlos Dehault Delassus?"

As the tract of Roy, south of Chouteau, cannot be affected by the decision south, for, on the claims which are the subject of this report, any further notice of it is unnecessary, except to state that the transcript thereof (lettered D) is transmitted for the purpose only of showing the relation which its evidence bears on the claims of Chouteau and Esther. Inasmuch as this office is already furnished with general instructions as respects the actions of the surveyor general upon New Madrid certificates, located on French and Spanish grants, I deem it needless to notice further than already done the location of Perault under Hamelin. As the question of location in the Esther claim, upon which I am requested, by the instructions of the 11th of March, to give my decision, involves, also, the location of the claims of Brazeau, Lebeaume, and Chouteau, I will now, from the written evidence and the foregoing observations, present my views upon the four cases under consideration.

88 1st. Joseph Brazeau.—I think that the reserve of four arpents square, made by him in his deed to Lebeaume, of May 9th, seventeen hundred and ninety-eight, and confirmed by the board, should be surveyed on the southeast part of the survey of Lebeaume, within the space embraced by the lines *ab*, *be*, *ef*, *fa*.

2nd. Louis Lebeaume.—This confirmation of 356 arpents should be surveyed so as to follow the north and western lines of the survey to be made for Brazeau, and thence the lines of the present survey, 2974, with the exception that its western boundary, the lines *m*, *n*, should be removed to the west, so as to take in the sixteen arpents reserved for Brazeau.

3rd. It is my opinion that the claim of Esther should be surveyed within the lines *ab*, *br*, *bw*, and *wa*.

4th. I think that the present survey, No. 671, of Chouteau should embrace the space within the line *ar*, *rs*, *sp*, *pg*, *gd*, so as to be bounded north by Brazeau or Lebeaume, as the case might be, and south by Roy, agreeable to his concession. I have now endeavored to fulfill the duty required from me. I have dwelt at length upon the subject, because of the great value of the lands in question, and of the bitter litigation that, for the last twenty years, the conflicting claims of adverse parties

thereto have already produced, and will doubtless still produce. I have gathered all the evidence (as far as it is known) which the united offices of the surveyor general and the recorder of land titles affords on the subject; and in the county court office the evidence wanting (but referred to) in the transcript of Brazeau's claim, which was necessary to ascertain the amount and locality of this reserved land; and in setting forth my opinion on the subject, I have sought to be guided only by that evidence, regardless of the conflicting interest of the adverse parties.

In dismissing the subject, I respectfully request in their behalf your early attention thereto, and also such special instructions, if necessary, to this office, when it is apprised of your decision, as will enable the surveyor general to carry it in effect.

ST. LOUIS. *June 16th*, 1847.

F. R. CONWAY.

The defendants objected to the reading of said report of Conway in evidence, for the reason that it was incompetent, irrevelant, and had been repudiated and overruled by the decision of the Secretary of the Interior, in the year eighteen hundred and fifty-one; but the court admitted the said report in evidence, and the defendants then and there excepted.

Testimony of F. R. Conway.

18th. Testimony of Frederick R. Conway, as follows:

I have resided in St. Louis, generally, since November, eighteen hundred and eighteen. I began as clerk in the surveyor general's office, in this district, in eighteen hundred and nineteen. Wm. Rector was
89 then surveyor general. I have studied and practised surveying. The first experience I had in surveying was in the latter part of eighteen hundred and nineteen, to the fall of eighteen hundred and twenty-nine. I was out surveying on several trips. I was appointed recorder of land titles in this district in eighteen hundred and thirty, and held the office near fifteen years. I was one of the commissioners to act on land titles in eighteen hundred and thirty-two. The recorder of land titles was, ex officio, one of the commissioners. I was appointed surveyor general in eighteen hundred and forty-five, and held that office until eighteen hundred and forty-nine. I am not acquainted with the localities in the vicinity of the mound, from having been on the ground. All I know about is from documents in the surveyor general's office. While I was surveyor general, probably in 1846, '47, or '48, instructions were received from the General Land Office for me to examine into the matter, and report as to the location of the reservation, and of the Esther claim, as they were to be bounded by each other. These instructions were prompted by an application from Gustavus A. Bird, addressed to the Commissioner of the General Land Office, who was interested in the Esther claim. I then examined into all adjoining claims that I thought might throw any light on the true location of the Brazeau and Esther claims. I examined that of Antoine Roy, Esther, Chouteau, Brazeau, and Lebaume, and perhaps others that I don't recollect. I did not direct any survey to be made. I was not authorized so to do, but only to examine and report my opinion from surveys already made. I also inquired of Surveyors Joseph C. Brown, Rene Paul. I believe Mr. Paul had surveyed all these tracts; he appeared familiar with the surface of the ground and the localities. I have been past the mound often, and rode up on to it, when I first came into the country. I recol-

lect the west ditch, but don't recollect then to have noticed the south ditch. I never was on the ground with a surveyor who pointed out the stones. I have seen corner stones, but never knew what particular tracts they bounded.

(Witness is shown concession to Brazeau and concession to Esther.)

Question. Examine the papers now shown to you, and state how, as a surveyor, following the descriptions and calls of those grants, and from all your personal knowledge of the locations in that vicinity, you would locate the four by twenty arpents conceded to Brazeau.

(Objected to by defendants, because states witness was never on the ground with view to examination. Objection sustained by the court.)

Question. Examine the petition and concession to Esther, and the petition and concession to Brazeau. State how you would, as a surveyor, in following the description and calls in those grants, and from facts within your personal knowledge, and from the official Spanish grants of land spoken of by you above, in the vicinity of the big mound, locate the concession of four by twenty arpents to *to* Brazéau.

(Objected to asking witness' opinion upon the documents, and incompetent. Objection overruled; excepted to.)

90 Answer. If the ground was such as to justify it, that is, if the foot of the hill on which the mound stands was four arpents from the river, I should commence there. That point would also be governed, in some respects, by the north boundary of the Esther claim. And then I should extend the west boundary in a northerly direction, parallel with the Mississippi River, twenty arpents; then east to the river parallel with the south boundary; then down the river twenty arpents, and then four arpents to the beginning. When I speak of parallel to the river, I mean parallel to the general course of the river, and not its meanders. Whether I should make the north and south lines parallel to the general course of the river, and not its meanders; whether I should make the north and south lines parallel to the west boundary, would depend on the north boundary of the Esther . I have never examined the ground, or corners on the ground, in connection with the surveys. All I know about the matter is from the plats and descriptions of surveys before me in the surveyor general's office. I have examined all those surveys, and caused a connected plat of them to be made, which was embraced in my report to the General Land Office.

From my knowledge as a surveyor and from official documents I have examined, I should think the map before the jury was a correct representation of the location of the different tracts; the four by four arpents being north of Labeaume's ditch; (plaintiff shows witness a copy of communication addressed by the surveyor general to the recorder of land titles, dated 9th March, eighteen hundred and thirty-three, and of the General Conway's reply to same, marked No. 21 and 22; also a survey of Joseph C. Brown, dated November, eighteen hundred and seventeen, marked No. 20, supposed to be referred to in communication of surveyor general to it, for aforesaid communication dated 9th March, eighteen hundred and thirty-three, and of General Conway's reply to same; also for survey of Joseph C. Brown, dated November, eighteen hundred and seventeen.) The heading of the survey now shown me, according to my recollection, corresponds with the one presented to me as recorder of land titles, by William Chambers, for a patent certificate. I endorsed on the back of it my objections to issue a patent certificate, because it confirmed two surveys in one. I acted officially in refusing to issue it. Shortly after I received a letter from the surveyor general calling on me to state my reasons officially

for refusing to issue it. The paper marked No. 21 purports to be a copy of the letter, and I believe is a copy. I gave my reasons in writing, and paper marked No. 22 is a copy of my reply.

(Plaintiff reads in evidence papers marked No. 21 and 22.)

I had very little conversation with Col. Chambers, when I refused to issue patent certificate. He didn't say much; can't recollect his words; made no remark that made any impression on my mind except that he had no objection to a re-survey; he only wanted his patent. The only thing that induced me to refuse to issue patent certificate was the statement at the head of the survey that it was the Brazeau tract. I
91 then had no connected plat in the office by which to determine whether the survey was correct or not. I suppose that it was that winter or the next year that Mr. Chambers applied again on a subsequent survey. He made some objection to the second survey of Joseph C. Brown, deputy U. S. surveyor, because it did not call for the river as he thought it ought to have done. There was no conversation between Chambers and myself as to where the reservation of four by four arpents was cut off by the second survey. When the second survey was presented I did not know that the south boundary was identical with the first survey on which I refused to issue a patent, or I should not have issued upon it. When I issued on the second survey I supposed it had cut off the reservation of four by four arpents which were included in the survey of eighteen hundred and seventeen. I afterwards learned that the excess of Labeaume's survey was thrown off on the west, and the south boundary was identical with that of eighteen hundred and seventeen. I didn't recollect ever to have any conversation with Col. Chambers about the location of the reservation until I was called on by the Commissioner of the General Land Office, when I was surveyor general, to report as before stated. Certificate No. 1161 I think was cancelled on account of Col. Chambers' dissatisfaction with the survey. The south boundary had nothing to do with the cancellation, because I did not know that the reservation had been cut off south by the ditch.

Cross-examined:

Defendant shows witness a survey marked No. 23, being survey No. 2974. The last patent certificate issued by me was issued on this survey, I presume. The length of the south boundary of the Labeaume tract by the first survey, No. 982 and 983, was 63 chains 60 links, by the second survey 60 chains 82 links; the excess, being 2 chains 78 links, was thrown off on the west. The courses on the two surveys are the same. I did not know that this excess had been thrown off on the west until I came to compare the two. I have examined the Soulard survey. I can't recollect whether I examined it on issuing the patent certificate. I did not examine it critically as to compare the courses and distances. The Soulard survey was then on record in the office. I had examined often and was familiar with its general outlines, but not with its courses and distances. (Soulard's survey shown witness.) It is my opinion that there was something like 374 arpents in the Soulard survey of the Labeaume claim. There is a general resemblance in the appearance of the Soulard survey and the U. S. survey. I never have examined the monuments of the ground. It is my impression that the ditch formed a part of the south boundary of the Soulard survey. I have frequently been at Major Christy's house. The road leading to his house ran close to the mound and then descended the hill near to the river, and then ran along up east of the house. I never noticed the south ditch in going to Christy's house. I first noticed the ditch, perhaps twenty years ago;

it then had the appearance of being an ancient ditch; there was a swell or embankment on one side of it.

92 Question. Do you know who exercised acts of ownership and control over and possessed the tract of land between the southern, western, and northern ditches and the river?

Answer. I knew who possed part of it; Major Christy was in possession, and the only one I know of in possession of any part of the tract between the ditches. I don't know whether he claimed to the south ditch or not.

Re-examined:

I don't know whether the ground in the vicinity of the Big Mound had been laid off in city lots or not when I first came here.

Testimony of M. L. Clark.

Testimony of M. Lewis Clark, which is in the words and figures following, to wit:

M. Lewis Clark, being sworn on behalf of the plaintiff, says: I was born in St. Louis forty-three years ago, and have resided here ever since, except when away at school. I am an engineer by profession, and was recently surveyor general of this district. I was surveyor general from July 1st, eighteen hundred and forty-nine, to January 1st, eighteen hundred and fifty-three. I am acquainted with the topography of the country in vicinity of Big Mound. I recollect back about thirty years. Broadway was opened under an act of legislature in eighteen hundred and thirty-eight. The court ordered it to be opened, and Mr. De Ward made the survey. I was with him when he did it; my attention has been called to the topography of the ground in the immediate vicinity of Big Mound. When I first knew the county it was open and unoccupied, except in some few places. The mound stood upon a low ridge leading from immediately north of it to one or two squares south, nearly parallel to Broadway. The ridge was on the brow of a bluff which forms the second bank of the river, and upon the projecting point of which the mound stood: the first platteau or bottom widening north and south of it, being under west of the mound itself. I am acquainted with surveying topographical as well as plain. I have examined the southeast and southwest corners of Chouteau's claim, the northwest corner of Roy, the southeast corner of the Labeaume tract, as surveyed in public survey No. 3332. I think, indeed, I have examined all the corners of the Labeaume tract. It was in eighteen hundred and thirty-eight and eighteen hundred and thirty-nine that I examined the corners of the Chouteau claim, and of the Labeaume tract in eighteen hundred and forty-one. The northwest corner of Roy was a stone east of a little mound, and not far from the west edge of either Main or Second street. The southwest corner of Chouteau was a stone on the side of a mound, I think near the foot, situated between Broadway and Second, north of Biddle, upon which Peter Brooks' house now stands. The southwest corner as laid down on the map of the Chouteau tract looks as if it was correct. The location of the mound is about correct, but not the topography. The

93 south boundary of the Labeaume tract as laid down on the map, seems to be about the line of the ditch when I examined it. Dobbins' house was perhaps about 10 arpents back from the river. I have seen Labeaume's south ditch on the ground. I first knew it about 33 years ago. I recollect it from a circumstance that occurred in my early boyhood. The ditch is about at the foot of the hill or ridge on

which the mound stands. The point at which water would stop may be a little north of the ditch. I should, as a topographist, place the foot of the hill just above where the ditch was. I should do that from an expression in the grant, "commencing beyond the mound," supposing this means beyond, with reference to the old town of St. Louis, which was some distance south of the mound. The north part of the hill seems to be correctly represented on the map, but not the rest of it; it is made too round; assuming the southwest corner of the Labeaume tract near "D," as laid down on the map, to be correct, it corresponds, as far as I know, with the call for it in the grant.

Cross-examination:

As nearly as I can first recollect, Major Christy resided on the tract between the north and south ditches. No one else that I recollect. Major Christy, I think, resided there some thirty years ago. I was on his place many times when a boy. The ditch was, I suppose, 3 feet high above the level, and 2 feet deep. I entered the plantation somewhere about where Second street ran. The road took a line to the west from Main street, going into a lane. The road crossed the ditch about where Main street is. There was an inclosure about his house and another between the house and river, and the land ran between them. Major Christy lived there until he died, I think. After his death his widow lived there until she died, three or four years ago, but not in the same house. She lived in a stone house built on the same block. William Chambers, Thomas Wright, and William Christy claim the whole Labeaume tract, as I have always heard. It is twenty-three years since I first heard of the occupation of Thomas Wright. The first fence I know of, said to have been and believed by me to have been made by him, was in eighteen hundred and forty. I have seen Chambers at Christy's house since I can first recollect; have seen him going about the land looking about, &c. I was a commissioner to make partition of Wright's estate in about eighteen hundred and forty. Before that there was no fence on the southwest part of the Labeaume tract. I saw Col. Chambers a short time before it was known he was dead, about five or six years ago. I saw him about the land from my earliest recollection up to a short time before his death; he was thn exercising ownership when he divided Wright's estate, in about eighteen hundred and forty. I knew P. Chouteau, sr., from my earliest recollection; he died some three or four years ago; he resided on Main street, in the block opposite the Bank of Missouri. (Deed from Brazeau to Labeaume shown witness. Question. Locate the reservation from its description in the deed without reference to anything else.)

Answer. I should not be able to locate it from that description alone without reference to something else. The foot of the mound is
94 all around it, and you could just as well locate it at the south foot or west foot as the north foot. I could locate it at either foot of the mound. In locating the four by twenty arpents by the description "commencing at the hill or mound," you could commence at either the foot of the hill or mound. What I understand by the hill is the elevation above the general surface of the ground on the base of the ridge. The ridge is elevated more at that point than anywhere else for half a mile south or west of it by twenty arpents. It is not higher than the Grand Prairie. The foot of the hill apparent, without reference to accurate measurement, is near Main street, at the bottom of the ridge, where the first platteau becomes narrowest. The southwest corner of survey No. 3332, as laid down on the map, might be taken at the foot

of one of the steeper declivities, I think the second. In ordinary language, I should take the foot of a mountain or of a hill to be the line of intersection of the steeper side with the plane of the general surface of the country. Survey No. 3332 was made by General Milburn, under my directions, and under instructions from which I had no discretion to deviate.

Cross-examination:

The south fence of Christy's inclosure, of which I have spoken, was somewhere between Madison and Jefferson streets; all the inclosure that I recollect of was north of that place. There were two powder-houses below, but I don't know whether on this tract or not; I know that the space between the powder-houses and Christy's fence was open; I know the troops camped there once; I hunted on the space.

By the court:

The interference of Roy with Esther was ascertained by reference to some documents; I don't recollect what one.

20th. The marine railway act of the 15th day of February, 1841, page 87, the cession acts of Missouri, agreed to be read from the printed cession acts of 1841.

Testimony of N. F. Heyer.

21st. The testimony of N. F. Heyer, and plat of levels, as follows:

N. F. Heyer, being sworn on behalf of plaintiff, says: I am county surveyor of St. Louis county; I have practiced surveying, more or less, some twenty or thirty years; since I was 16 years of age; I executed the order of survey in this case; my report does not perhaps embody all the papers I had before me when I executed the order; it embodies all that I deemed essential, and I think all that I found necessary to use in executing the order. When I first went on the ground, Mr. Magwire, the plaintiff, was present, and Mr. Sturgeon and Mr. File, who represented the defendants; I then had two orders in my hands, one from this court, and one from the United States court. Mr.
95 Magwire represented the plaintiff in both cases; my report contains all the particulars of the survey that I or the parties deemed essential, and all that I can say about it. When I executed the order of survey, I had with me the documents endorsed on the back with the letters A, B, C, D, and E, in red ink, as mentioned in my report filed in this case, February twenty-sixth, eighteen hundred and fifty-three. I cause the map, mentioned in my report, to be made; I located the 4 by 4 arpents as indicated on the map, by request of plaintiff.

Question. Following the data you had before you, mentioned in your report, state where, on this map, in your judgment, the 4 by 4 arpents of Brazeau should be located.

(Objected to, objection overruled.)

Answer. I have indicated Labeaume's north and west ditch for what was stated to me on the ground by both parties. The traces of the ditch are nearly gone, both on the north and on the south end. I relied principally on the statement of the parties who were with me: I found very few indications of the ditch on the south; there were indications of the ground having been disturbed, but I should not have been able to have laid it down as having been a ditch, had I not been informed that there had been a ditch there, and seen it laid down on maps. The shaded lines, near the place marked "old road," indicate the brow of the hill; the

ground there is rather rough and uneven; the three profiles on the map are laid down as taken on the ground itself.

Cross-examination:

Question. Supposing you commence at the foot of the mound, where would you locate the whole tract?

Answer. The west line would run further west than it is laid down on the map, until it got up towards the Rocky Branch, when it would cross and fall east of it. The Esther claim is more than four arpents wide; if I take the northern extremity of the mound as the starting point, I could satisfy the call by running north to the Rocky Branch; I do not know how it was first suggested to me that the foot of the hillock was the starting point, and not the foot of the mound. Mr. Magwire has, at various time, held arguments with me, in presence of Mr. File, and at other times, explaining the thing to me as he wished it represented on the plat. I have been surveying since the year eighteen hundred and forty-nine; I came here ten years since, and resided here some two years in the surveyor general's office; I then went away and returned in the spring of eighteen hundred and forty-nine. I never made any previous survey of this ground; I could not properly locate the reservation by the deed from Brazeau to Labaume alone, independent of all the other information I possess on the subject.

Question. Can you locate the land thus described, which consists of four arpents of land, to be taken from the foot of the hillock or mound, from the call La Grange de Terre, by 20 arpents in depth, bounded by the Rocky Branch, at the extremity which is opposite, east by
96 the Mississippi River, and west by the King's domain, the said Brazeau reserving for himself four arpents of land from the foot of the mound in the south part of the tract?

Answer. In that case I should commence at the extreme northern base of the artificial mound, and continue up to where a line parallel with the line forming the south boundary of the tract would strike the Rocky Branch when produced. The line forming the southern boundary would be a straight line from the mound to the river; I should then locate the reservation at the southern extremity of the four by twenty arpents so located. Roy's tower is about at the point marked "T" in pencil, on the map. Esther's claim runs into the Roy tract about an arpent and a half when located as shown on the map by the blue lines. Distances can be ascertained from the scale on the map. I think I had Soulard's survey of the Labeaume tract before me when I made my survey. Upon my hypothesis, the north dotted line on the map would be the north boundary of the Brazeau tract, and the south dotted line is sixteen arpents south of the north dotted line; the north and south ditches are as marked on the map; the pale blue shading represents a sand bank. From the appearance of the ground, I judge the bank of the river used to be about where west edge of this shading is. If I were to locate the Esther claim so as to cover the whole of Roy's tract, the northern boundary would be about midway between the north boundary, as shown on the map, and the mound.

Reëxamination:

The foot of the *hill* on which the mound stands is not at present so easily ascertained as it was formerly, from appearances. The foot of the hill or slope is precisely at the point where I have fixed the south-west corner of the four by four arpents. There are no houses on the four by four, but on the adjoining grounds. By improvements, I meant

the grading and building on Broadway; I made a survey, and took the level of the ground in order to determine where the determination of the descent was; I might have placed it a little differently one way or the other, if I had not found it placed there before; I located the different tracts so as to make them all harmonious; had I located either one by itself, I might have located it differently by taking them altogether. This map seems to me the most consistent way of locating. I took for the starting point of my survey the intersection of Roy's north line with the curb-stone on the east side of Maine street, which point I ascertained by running, myself, the north line of Roy's survey from Broadway to the river. There is a very large stone put west of Second street, and south of Ashley, which is set there as the northwest corney of Roy, as I have been told old surveyors, and as I have proved by running the line from other points given. I can't say whether that is a Spanish corner or not, but I suppose so, because it looks like a very old stone, and I have never heard it questioned; I don't know that I found any other corner that was supposed to be a Spanish corner; I think there was another pointed out to me at a point 10 chains 50 links south of the bridge; I
97 have a vague recollection that I examined the stone, and that it looked very old, and was worn smooth; I didn't dig around it.

In answer to question by juror: An arpent in length is something lik one hundred and ninety-two feet.

In answer to question by court: Labeaume's ditch has, in all the surveys, I believe, been considered the southern line of the Labeaume tract.

By Mr. Hill:

There is a bluff extending all along up past the mound, and thence in a northwest direction, and from this bluff there are similar slopes to the one from the mound to the southwest corner of the four by four arpents as laid down by me.

Map called for in N. F. Heyer's testimony.

(Here follows map marked page 97.)

Testimony of A. H. Evans.

22d. The testimony of A. H. Evans, as follows:

Augustus H. Evans, sworn on behalf of the plaintiff. I came to St. Louis in eighteen hundred and seventeen. I followed merchandising here, and in the Boonslick county, until eighteen hundred and twenty-two, when I came to St. Louis to reside. I learned practical surveying when I was ten or twelve years of age. I was employed in the surveyor general's office fourteen or fifteen years, from eighteen hundred and twenty-two to eighteen hundred and thirty-six, and I have been employed to survey public lands and private claims. I ascertained and ran the lines of the Roy, Esther, Brazeau, Chouteau, and Labeaume grants in north St. Louis. I surveyed from the Spanish grants and nothing else. I was some two or three years at it. It was soon after McRae *McRae* came into office as surveyor general. I had no particular authority for making them. There was an application by Strother to McRae for a survey of the Brazeau four by four arpents; McRae was then new in the office. I think I finished the surveys in eighteen hundred and twenty-six or eighteen hundred and twenty-seven. I don't know that I could tell where I began. I began at various points at different times. I located the different claims as they are laid down on Heyer's map, except that on my map the north-

west corner of the Brazeau 4 by 20 arpents came up nearer to where the old road crosses the creek than it is laid down on Heyer's map. The whole west line ran a little farther west on my map. The variation of the compass would not make this difference. The expression in the old grant is "to take from, and begin at the descent of the road into the creek," and my conclusion from that was, that the northwest corner which I took was the correct corner of Brazeau's grant. I located the reservation of four by four arpents in the southern part of the tract north of Labeaume's ditch, and bounded south by it. At that time I could plainly trace Labeaume's ditch; none of those ditches conformed to
98 Brazeau's grant but the southern. The west ditch was west of Brazeau's west line, and the south ditch north of his north line; the north and south ditches were about sixteen arpents apart. The west ditch ran parallel to the bluff and the ditch. It did not run parallel to the river; it was in some places five arpents from the river. I never computed the area within the ditches. The south ditch extended west of Brazeau's west line. I couldn't say how far; say 100 or 200 feet. There were then two corners of Roy's claim standing prominently; the northwest and southwest, also the southwest corner of Chouteau. The northwest corner of Roy is still standing. The corners were indicated by large stones. At the Chouteau southwest corner, a large stone was standing right at the roadside, then called Bellefountaine, now Broadway. The old Bellefountaine didn't run exactly where Broadway now does; it ran east of it. It ran close up to the mound in the Eglize tract. I should suppose 2nd street ran pretty near, perhaps a little east of the northwest corner of Roy. I was on the ground at the time the Nash case was tried, and dug up the southwest corner of Chouteau's tract. At the same time we went to Roy's corner; Leflingwell and Green were with me. I heard Mr. Heyer testify yesterday. The stone spoken of by him as the northwest corner of Roy is the same stone spoken of by me. When I first came to the county, I observed the topography of the country around the Big Mound. I went on to the mound the first Sunday after I came to the State, in eighteen hundred and sixteen. At that time a stone wall ran along right on the top of the mound; there were then no houses. Major Christy's house was nearly half a mile north of the mound, and was the only house in that vicinity. His house was nearer to the river than to the Bellefountaine road. As well as I remember there was nothing to fix the location of the Esther claim, except the map of Trudeau on the grant. That map seemed to fix the north part of Esther rather beyond the mound and between the mound and the river. Then I ascertained from Roy's grant the interference of Roy and Esther. Then by measurement from the interference of Roy and Esther to the Rocky Branch, gave the quantity claimed by Roy and Esther. Then measuring from where I supposed Esther began in Roy, the north line of the Esther claim fell upon the ditch, as the Roy and Brazeau and Esther grants were each 20 arpents in length; that corresponded, as I thought, with the expression in the Brazeau grant, "commencing at the foot of the hill on which stands the mound," and with the expression in Labeaume's grant of the descent of the road into the creek, by the perpendicular, to the Mississippi. That makes a triangle of which the perpendicular is one side, the river one, and Rocky Branch the other. The perpendicular began west of the bridge. The old road ran about where it is indicated on the map, a little west of present the bridge. (Esther's concession shown witness.) In making those surveys the grant of every one of the claims were before me, including the Esther grant. Whenever I say "grants" I mean Spanish

grants. I have computed the quantity in the triangle, but I don't
99 recollect it. The creek is so crooked that the quantity could not be guessed at. I surveyed the creek by the meanders on the bank. Esther washed for me many years. I think I have seen the Esther concession now shown me in the hands of Esther. It was either this or a copy that I got to locate the mound by; don't read French. I have seen a great deal of Trudeau's handwriting, signatures to grants, &c. I have been present several times when his writing has been proved in court. I have heard Pascal, Cerre, Leduc, Caddy, Chouteau, Zenon, and a number of them swear to his handwriting.

Question. From signatures of Zenon Trudeau, which you have seen proved in judicial proceedings upon official papers, purporting to have been by him signed, state whether, in your opinion, the signature of Zenon Trudeau on the document shown you is his genuine signature.

(Objected to by defendant. Question withdrawn.)

The southwest corner of the Brazeau grant on the map is about where I put it, from appearances. It is at the foot of the hill on which the mound stands. The foot of the mound is at the northern extremity of the dark shading of the map. The south side of Brooklyn street just suits the north foot of the mound. The ground was there in a state of nature—no houses, no timber. Mullanphy had a house, as stated; there was some brush in sight but no woods. Since then there has been a change in the banks of the river generally, by accretion. There is a considerable accretion at the north end of the Brazeau four by twenty arpents; not much change in the banks opposite the four by four. It is a rocky shore all the way from the south end Esther to the north end of the Brazeau four by twenty. The country all along the Rocky Branch is rough, ravines running into it, &c. The creek is in a deep bed, bank high until you come to the natural bridge. All the ground in the Labeaume tract west of the dotted line lies high and well. A peculiar feature of all the country about St. Louis is, that it is full of sink-holes; that is the case with this country.

Cross-examined:

The country west of the ridge on which the mound stands is level prairie; as level as the country generally. The ridge is the same one which extends from Chouteau's mill creek all along up past the court-house to the mound which stands on the brow of it, and there runs off towards the northwest, and then turns again down towards Brazeau's northwest corner, so as to form a sort of horseshoe. This ridge or hill divides the prairie from the bottom land. The foot of this hill is all around the slope or ridge; every part of the mound was made. I once computed the quantity of earth taken from the hill where the mound came from. The spar or apron of the mound running east towards the river was also built by the earth being carried there; have seen men dig into mound a hole on east side; nothing there but yellow dirt. The stone wall on top of the mound is said always to have been there.

There were other mounds on this ridge, some on the brow, and
100 some on the back of it; there were many thousand cubic yards of earth in the mound; the earth was taken from just across Broadway. I suppose there were twenty mounds there in a cluster, none of them more than one hundred yards apart. The old "half moon" was put at the end of Cherry street; south side of Cherry street. I think the street now runs over it; that was an old Spanish fortification. Roy's tower was intended to be in the centre of his grant, but it did not actually stand in the centre; it stood nearer the river than to his west

line; can't recollect the distance from the "half moon" to Roy's tower. If you commence at the creek and locate Brazeau and then Esther, Esther won't come to Roy's tower. Roy's tower is south of Esther's south line; can't say how far; can't say whether Roy's tower was the oldest erection on Roy's tract or not. As well as I recollect, when I came here, the old and poor houses and stabling all around the tower; there were no houses within Esther's claim as laid down by me. There was no other "half moon" in the north part of the town. The bastion, as it was called, stood down near the city hotel, Rector's old house. Labeaume had an orchard fenced in back of and above his house. I don't think there was any fence standing on the south ditch when I first went on to the mound; there was a fence back of it enclosing Major Christy's. The Bellefountaine road ran just west of the west ditch, and close to it. The south ditch in eighteen hundred and seventeen was, may be, two feet deep and three feet high. The dirt was thrown out and formed a sort of embankment. The north ditch was of the same kind; they all seemed to be on the same plan. Major Christy had, in eighteen hundred and seventeen, enclosed a part of the tract between the ditches. The south end of the tracts were not in possession of any one; there was no one on the tract but Maj. Christy, and those who married into his family, who lived with him. Maj. Christy had an enclosure in Christy's addition where he pastured his cattle. There was a road leading along up the river past Maj. Christy's house around the Bellefountaine road. Strother knew nothing about the surveys made by me until they were done. Col. McRae was applied to by Strother for an order of survey, and McRae being a French scholar translated all the*re* documents. I have been interested in New Madrid certificate No. 184; it was located by Bancroft & Rector, extending south from Labeaume's ditch, not under my directions. I don't think I was interested in it when I commenced making the survey; never had any interest in the Esther claim. I ran Chouteau's north line to the ditch also. I find the Brazeau reservation by using all the Spanish grants that bounded it in any way; Roy, Chouteau, Esther, Brazeau, and Labeaume.

Question. Make the location of the reservation on this description, consisting of 4 arpents of land, to commence from the foot of the hillock or mound, commonly called La Grange de Terre, by 20 arpents in length, bounded by the Rocky Branch at the extremity, which is opposite to the said mound, E. by the Mississippi River, and W. by the King's domains; the said Mr. Brazeau reserving four arpents of *of* land for himself to be taken at the foot of the mound in the S. part of the said tract; upon that description alone locate the reservation.

101 Answer. I should begin right at the foot of the mound at Brooklyn street, as he says. In surveying, it is customary to take the beginning named in the paper; but starting from the foot of the mound, you would never reach the creek with your twenty arpents. Taking that beginning, the west line of the Brazeau tract would fall away west of where it is on the map, and the whole tract would contain more than 80 arpents and more than 120 arpents. It is more common for Spanish grants to overrun than underrun. Major Christy lived and died within the boundary of the ditches. I think he died there some ten or twelve years ago.

Re-examined:

(Plaintiffs' counsel reads to witness a translation of Brazeau's deed to Labeaume, also concession to Brazeau.)

Question. Taking these two documents together, how is the Brazeau 4 by 20 arpent to be located. Where would you begin?

Answer. I would begin at the foot of the hill on which the mound stands and run north to the neighborhood of Rocky Branch as laid down on the map. Beginning at the foot of the mound and running N. N. W., you could not locate the lands so as to harmonize with a single call in the grant. I think in that case the west line would run west of Labeaume's west ditch, but am not certain. Christy's fence was north of Labeaume's south ditch, and north of the north line of the four by four arpents, but can't say how far. The fence was not far from the house; much closer to his house on the S. than on the N. It was about half a mile from the mound to Christy's house. If Labeaume's west ditch is correctly laid down on Hyer's map, by applying the rule, I see that the west line, beginning at the mound, would come a little east of the ditch

23rd. The testimony of John B. Sarpy, as follows:

Testimony of John B. Sarpy.

Mr. John B. Sarpy, sworn on behalf of defendants, (plaintiffs,) says: I am past 50 years old; was born in St. Louis, and have lived here since. I knew Pierre Chouteau, sr., from my earliest recollection up to his death; was intimate with him and family. Mr. Chouteau was the uncle of my mother. Old Mr. Chouteau was in the fur business. Chouteau and Berthold raised me. I was intimate with Mr. Chouteau's business. I knew of old Mr. Chouteau owning property near the Big Mound. In eighteen hundred and twenty-one or eighteen hundred and twenty-two, heard there was a sale of land belonging to old man Chouteau to his son, Aug. P. Chouteau. I knew of this sale after it had taken place. The last sale by Chouteau, sr., after the sale to his son of land up near Big Mound, was made to Strother in 1825 or '6. This was all his land up there. All lands in those early times were used by everybody for wood, grass, and water, &c.; and was very cheap. Mr. Chouteau was considered a father here in those times, and the people used his property freely as children would use their father's.

102 Cross-examined:

I understood that old Mr. Chouteau did some surveying in early times here. He was considered a very intelligent man, and was acquainted with the bounds of the different surveys about St. Louis.

25th. Deed of Louis Labeaume to William Chambers, dated 27 day of April, 1816, and deed of William Chambers to Christy and Wright, dated May 4th, 1816, each as follows:

Deed of Louis Labeaume to Mr. Chambers.

This indenture, made the twenty-seventh day of the month of April, in the year one thousand eight hundred and sixteen, between Louis Labeaume and Susan Chauvet Dubreuil, his wife, of Richwood Township, county of Washington, Missouri Territory, and William Chambers, of Jefferson County, State of Kentucky, witnesseth: That the said Louis Labeaume and Susan Chauvet Dubreuil, his wife, for and in consideration of the sum of seven thousand and four hundred and sixty dollars, current money of the United States of America, to them in hand paid, the receipt whereof they do hereby acknowledge, have granted, bargained, and sold, aliened, released, and enfeoff, and confirmed, and by these

presents do grant, bargain, and sell, alien, release, enfeoff, and confirm unto said William Chambers, his heirs and assigns, a certain tract or parcel of land, situate, being, and lying in the county of St. Louis, Territory aforesaid, and on the waters of the Mississippi, containing three hundred and seventy-four arpents, French measure, and bounded as follows, to wit: Beginning at a bound marked "D" on the original plat of survey, made by virtue of the original Spanish concession, north sixty-seven degrees thirty minutes east, to a bound "E" on the Mississippi; thence with the meanders thereof, to the mouth of Stony Creek; thence up with the meanders of said creek to a bound "A;" thence from "A" south, twenty degrees thirty minutes east, thirty-six poles to "B;" thence from "B" south, sixty-seven degrees thirty minutes west, one hundred and thirty-six poles to a bound "C;" thence from "C" south, twenty-two degrees thirty minutes east, one hundred and sixty poles to the place of beginning; the whole, according to the plat of the original survey, made by Ant. Soulard, the tenth of the month of April, in the year one thousand seven hundred and ninety-nine; reference thereto being had, it will more fully appear; and all the estate, right, title, interest, claims, and fee of them, the said Louis Labeaume and Susan Chauvet Dubreuil, his wife, of, in, and to the said William Chambers, his heirs and assigns, to his and their only proper use, benefit and behoof forever. And the said Labeaume and Susan Chauvet Dubreuil, his wife, do covenant and agree to and with the said William Chambers, his heirs and assigns, that they are seized and possessed of a good, sure, and perfect estate in fee-simple of, in, and unto said tract of land, with all the appurtenances, and that they have full power and lawful authority to sell and convey
103 the same to the said William Chambers, his heirs and assigns. And the said Louis Labeaume and Susan Chauvet, his wife, do further covenant and agree to and with the said William Chambers, his heirs and assigns, that the said tract or parcel of land is free and clear of and from all right and title of dower or incumbrance whatever, and that they will, their heirs, executors and administrators, shall warrant and defend the said tract or parcel of land, with all the appurtenances, unto the said William Chambers, his heirs and assigns forever, lawfully claiming, or to claim, the same. In testimony whereof, the said Louis Labeaume and Susan Chauvet Dubreuil, his wife, have hereunto set their hands and seals, on the day and year first written.

L. LABEAUME. [SEAL.]
SUSAN LABEAUME. [SEAL.]

Signed, sealed, and delivered in presence of—
AUGUSTE LEWIS.
ALBERT LEIM.
JNO. E. THALOZEN.

RICHWOOD TOWNSHIP, COUNTY OF WASHINGTON.
Missouri Territory.

Before me, one of the justices of the peace for and in the township aforesaid, personally appeared Louis Labeaume and Susan Chauvet Dubreuil, his wife, of the said township, who acknowledged to have signed, sealed, and delivered the within in'trument of writing as their act and deed for the purposes therein contained; and having examined Susan Chauvet Dubreuil apart, and out of the presence of Louis Labeaume, her husband, she has declared and said she had signed and sealed the above of her own free will and consent, without any force or compulsion whatever. In witness whereof, I have hereto set my hand and seal the

twenty-seventh day of the month of April, one thousand eight hundred and sixteen.

[SEAL.] JOHN HORRINE, *J. P.*

April 27th, 1816, received of William Chambers, in part payment of the land conveyed by the foregoing deed, the sum of two thousand four hundred and eighty-six dollars and sixty-seven cents, it being one-third of the said purchase money. I have a mortgage*d* on the land.

L. LABEAUME.

MISSOURI TERRITORY, *County of St. Louis, ss:*

Recorded Book F, pages 9 and 10, this third day of July, eighteen hundred and sixteen.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this twelfth day of October, in the year of our Lord one thousand eight hundred and thirty, before me, a
104 justice of the peace within and for the county of St. Louis, came John E. Thalozen, who is personally known to me to be the person whose name appears subscribed to the foregoing deed, as a witness of the execution thereof, and made oath that Louis Labeaume and Susan, his wife, whose names appear subscribed to the said instrument of writing, as grantors, are the real persons who executed the same; that the said Louis and Susan, his wife, subscribed, sealed, and delivered the same in his presence, and acknowledged the same to be their act and deed, for the purposes therein mentioned, and that he, the said John E. Thalozen, subscribed the said deed as a witness, in the presence, and at the request of the said Louis Labeaume and Susan Labeaume.

JOHN E. THALOZEN.

Sworn and subscribed this 12th day of October, 1830, before—

J. V. GAVVINS.
AUGUSTE SINOM.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Stephen D. Barlow, ex-officio recorder, clerk of the county court, in and for the county aforesaid, hereby certify that the foregoing deed from Louis Lebeaume and wife to William Chambers, was on the 17th day of September, eighteen hundred and forty-six, filed for record in my office, and is truly recorded therein, in book C, No. 4, page 274, and following.

Given under my hand and official seal at St. Louis, the day and year aforesaid.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI, *County of St Louis, ss:*

Be it remembered that, on this eighteenth day of September, in the year of our Lord one thousand eight hundred and forty-six, in the county of St. Louis aforesaid, before me, Stephen D. Barlow, clerk of the St. Louis County court, came John E. Tholozen, who is personally known to me to be the same person whose name is subscribed to the within and foregoing deed, from Louis Labeaume and Susan Labeaume to William Chambers, as witness thereto, and made oath that Louis Labeaume and Susan Labeaume, whose names are subscribed to the said deed as parties thereto, are the persons who executed the same; that the said Louis Labeaume and Susan Labeaume signed, sealed, executed,

and delivered the same in his presence, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned; and that said witness, John E. Tholozen, then subscribed his name to said deed, as a witness thereof, in the presence and at the request of said parties.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office in said county, the eighteenth September, eighteen hundred and forty-six.

[L. S.] STEPHEN D. BARLOW,
Clerk County Court, St. Louis County, Mo.

Filed and recorded September 18, 1846.

S. D. BARLOW, *Recorder.*

105 STATE OF MISSOURI, *County of St. Louis, ss:*

I, Stephen D. Barlow, clerk of the county court and ex-officio recorder, in and for the county aforesaid, hereby certify that the foregoing is a true and correct copy of an instrument in writing that was filed for record in my office September eighteenth, eighteen hundred and forty-six, as fully as the same remains of record in Book C, No. 4, page 281, and following.

Given under my hand and official seal at St. Louis, this 26th of June, A. D. 1847.

[L. S.] S. D. BARLOW, *Recorder.*

Deed from William Chambers to William Christy and Thomas Wright, as follows:

Deed from to Christy and Wright.

This indenture, made the fourth day of May, one thousand eight hundred and sixteen, by and between William Chambers, of Jefferson county, in Kentucky, of the one part, and William Christy and Thomas Wright, of the town of St. Louis, in the Territory of Missouri, of the other part, witnesseth: That the said William Chambers, for and in consideration of the sum of four thousand nine hundred and seventy-three dollars and thirty-three cents, to him in hand paid, the receipt whereof he doth hereby acknowledge, have granted, bargained and sold, and by these presents, do grant, bargain, and sell unto them, the said William Christy and Thomas Wright, their heirs and assigns, two equal undivided third parts of a certain tract or parcel of land, containing three hundred and seventy-four arpents, French measure, which land is situated, lying, and being in the county of St. Louis, in the Missouri Territory, and bounded as follows, to wit: Beginning at the letter marked D, on the original plat of survey, made by virtue of the original Spanish concession, running from thence north sixty-seven degrees thirty minutes east to the letter E, on the bank of the Mississippi; thence with the meanders thereof to the letter A, on the said plat; thence south twenty degrees thirty minutes east, thirty-six poles to B; thence south twenty degrees thirty minutes west, one hundred and thirty six poles to the letter C; thence south twenty-two degrees thirty minutes east, one hundred and sixty poles, to the place of beginning, containing, according to the aforesaid original plat of survey made by Antoine Soulard, the tenth day of April, in the year one thousand seven hundred and ninety-one, reference thereunto being had it will more fully appear, it being the same tract or parcel of land purchased by the said William Chambers of Mr. Louis Labeaume and Susan Chauvet Dubreuil, his wife, for and on the joint

and equal account of the said Christy, Wright, and himself, on the twenty-seventh day of April, eighteen hundred and sixteen, to have and to hold the said tract or parcel of land, with all the appurtenances, unto the said William Christy and Thomas Wright, their heirs and assigns, to them and their only proper use and behoof forever.

106 And the said William Chambers doth covenant and agree to and with the said Christy & Wright, their heirs and assigns, that he, the said William Chambers, doth covenant and agree to and with the said Christy & Wright, their heirs and assigns, that he, the said Wm. Chambers, will warrant and defend said tract of land unto the said Christy & Wright, their heirs and assigns, again' all and every person and persons lawfully claiming, and to claim the same by thought or under him, the said Chambers, claims of any other person or persons whosoever. And the said William Chambers hereby further covenants and agrees to, and with the said William Christy & Thomas Wright, that they shall have full power and authority in common with himself, to proceed against the said Louis Labeaume and his legal representatives at law, or in equity, under the covenant of general warrant contained in a deed of conveyance from said Labeaume and his wife, to the said Chambers, for this same tract of land, which deed was executed on the twenty-seventh day of April, one thousand eight hundred and sixteen, for any damage they may sustain by the loss of any part of the land, and they are hereby fully vested with the said authority.

In testimony whereof the said William Chambers has hereto set his hand and seal the day and year first above written.

[SEAL.] WILLIAM CHAMBERS.

Test: M. BROOMFIELD HALL.
J. NEAD.

TOWNSHIP OF ST. LOUIS, COUNTY OF ST. LOU'S,
Territory of Missouri, ss:

On the fifth day of May, eighteen hundred and sixteen, personally appeared before me, the subscriber, a justice of the peace for St. Louis Township, William Chambers, and acknowleged the foregoing instrument of writing to be his act and deed, and the premises therein mentioned to be the right and estate of the within-named William Christy & Thomas Wright, their heirs and assigns.

Given under my hand and seal the day and year aforesaid.

[SEAL.] JERAH CONNOR, *J. P.*

Recorded this 3d day of July, 1816.

M. P. LADUC, *Clerk.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder in and for the county of St. Louis, do hereby certify the foregoing to be a full and complete copy of a deed from William Chambers to Christy & Wright, and also of the certificate of acknowledgement, and of the date of recording thereof as fully as the same remains of record in my office in Book F, page 10.

Witness my hand and office seal this 2d day of March, 1853.

[L. S.] S. D. BARLOW, *Recorder.*

107 25th. Protest of John Magwire to the recorder of land titles, dated January 22d, 1852, as follows:

Protest of John Magwire.

ST. LOUIS, *January 22d*, 1852.

To ADOLPH BENARD, Esq., U. S. recorder of land titles:

SIR: I have been informed that an official survey has recently been made of four by four arpents of land under a concession to Joseph Brazeau, north of the Big Mound, in the city of St. Louis; which survey I have also been informed locates said four by four arpen*st* south of Labeaume's ditch; I have also been informed that said survey has been approved by the surveyor general of this district, and that you have been requested by some party or parties to issue a patent certificate, in conformity with said survey. Now I hereby protest against the issuing of a patent certificate upon the said survey, and protest against the location of said four by four arpents, as the legal representative of Joseph Brazeau, and lay before you the evidence *or* my being such legal representative, to wit: a copy of a deed made by said Brazeau to Pierre Chouteau, No. 1, a copy of a deed from said Chouteau to George F. Strother, No. 2, and a copy of a deed from said Strother's administrator, No. 3; I also inform you that suits in ejectment, to recover the possession of the said four by four arpents, to locate as the same should be, north of Labeaume's ditch, have been instituted in the circuit court of the United States in this district, and in the St. Louis court of common pleas, which suits are now pending, and the trial of them will determine the proper and true location of said four by four arpents, confirmed by the United States to the said Brazeau, and now claimed by me as his legal representative. I have to request that you communicate this paper, with the exhibits numbered from one to three, inclusive, to the Commissioner of the General Land Office, and ask for his instructions in the premises.

Respectfully,

JOHN MAGWIRE.

Received this notice January 22d, 1852.

ADOLPHE RENARD.

26th. Protest of Pierre Chouteau of June 24th, 1818, and protest of Pierre *Pierre* Chouteau of May 20th, 1826, as follows:

Protest of Pierre Chouteau, June 24th, 1818.

JUNE 24, 1818.

SIR: With all the respect which I most sincerely entertain, I take the liberty of addressing you on a subject interesting to me *an* account of the property which it embraces, and of great public consideration
108 as to the principles which it involves; of this affair you have had heretofore no official information, although it has already been the subject of conversation between us. By reference to the books of the records of land titles C, page 398, it will be found that I was put in possession by the Spanish government, under decree of the 16th October, 1799, of that lot or parcel of land which is bounded by the Mississippi in front, on the south in part by Antonie Roy, on the north by Louis Labeaume, and extending in depth about six arpents from the river. That, under the first act passed by Congress for the adjustment of land titles, I presented this claim, against which no charge of irregularity ever was or could be made. Yet, in the superabundance of my own caution, and defence for the possible rights of others, I did, when

this claim was before the commissioners, abandon as much thereof as might be found to interfere with the front of the field lots. It is not for me to account for the plan or mode of entry employed by the board in recording this abandonment; the act is theirs, not mine. It was understood then and now, and always, that it was not my purpose wantonly to throw away land so valuable; the *the* object was to decline a contest with any holders of field lots to the west of my tract. But to the north, to Labeaume's, and to the east, to the river, it was well known that there was no private pretentions, other than those which had been merged in mine. Of this later description is that of Esther, mulattress, for 80 arpents, registered in Livre Terrien, No. 5, and recorded in books of the record of land titles C, page 159. Esther's claim has never been abandoned, and it is mine by bona fide purchase of record. Under all these circumstances it is with surprise and regret that I have heard of a location of a New Madrid certificate between the mound and the ditch of Labeaume; surely the United States have no land there, and it is evident that the relief provided for by the act of the 17th February, 1815, can only be extended out of the property of the Government, and that cannot be the property of the Government which has not been decided against claimants by Congress. These considerations premised, it is the object of this letter to refer you to the record above cited, as well as old survey in your own office; and to protest against the return of any survey of a New Madrid location within the above-mentioned limits, as the vacant lands there are mine by concession of the Spanish government, and by general allowance of the United States commissioner.

I am, very respectfully, sir, your obedient servant,

PIERRE CHOUTEAU.

To General WILLIAM RECTOR.
United States Surveyor for Illinois and Missouri Territories.

Protest of P. Chouteau, as follows:

Protest of P. Chouteau, May 20th, 1826.

ST. LOUIS, *May 20th*, 1826.

SIR: As soon as I was apprised that a New Madrid certificate, No. 184, issued in favor of Henry Peyroux, for 160 acres, had been so located in township 45 N., range 7 E. of principal meridian, as to 109 cover the whole of a small tract of sixteen arpents, which I had purchased from Joseph Brazeau, to whom it had been confirmed by the old board of commissioners, and also part of another tract of ninety-three 1-100 arpents confirmed to me by the same board, I protested on the 24th day of June, 1818, against such an act, before General William Rector, then surveyor general, but understanding that application has been made to you for a patent by the proprietor of said certificate, and apprehensive that you had not yet been made acquainted with the facts above stated, I have thought it necessary to do it, and to request you at the same time to postpone issuing a patent in favor of the aforesaid location. The confirmation referred to, in favor of Joseph Brazeau and myself, are Nos. 980 and 671.

I have the honor to be, very respectfully, sir, your most obedient and humble servant,

PIERRE CHOUTEAU.

The Hon'able GEORGE GRAHAM,
Com'r General Land Office.

27th. Letter of Commissioner of the General Land Office, dated January 14th, 1858, as follows:

Letter of Commissioner of General Land Office.

GENERAL LAND OFFICE,
January 14th, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of this date, refer'ing to my report of the 12th inst., in the case of Labeaume & Brazeau, and desiring to know my opinion as to the propriety of cancelling the Brazeau patent. Taking the decision of the appellate authority, that of one of your predecessors, Mr. Stuart, as binding upon this as a subordinate authority, the patent, in my opinion, cannot now properly be recalled and cancelled, because the survey to Brazeau was made in pursuance to that decision. But were we not controlled by that decision, and our own opinion desired as a matter independently of it, and as indicating the sense of this office primarily in the premises, I have the honor to report, that according to the deliberate decision of this office, in eighteen hundred and forty-seven, the location assigned to Brazeau in the patent is an error, and it would follow that the patent should consequently be withdrawn and cancelled.

With great respect, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. JACOB THOMPSON, *Sec'y of the Interior.*

110 28th. Letter of the Secretary of the Interior to the Commissioner, dated February 4th, 1858, as follows:

Letter of Secretary of the Interior to the Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, February 4th, 1858.

SIR: Having considered your reports of the 12th, 14th, and 28th ultimo, and the papers therewith, relative to a patent which has been issued to the representatives of Joseph Brazeau, under the decision of my predecessor of July 25th, eighteen hundred and fifty-one, it appears that Brazeau's representatives have never asked a survey or patent for the land in said patent described, and that they have refused to receive said patent. Let it be accordingly recalled, but this order you will not construe or regard as in any way affecting or impairing the above-mentioned decision of my predecessor.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

29th. Letter of Thomas A. Hendricks, Commissioner, to the recorder of land titles, dated February 8th, 1858, as follows:

Letter of Thos. A. Hendricks to Recorder of Land Titles.

GENERAL LAND OFFICE,
February 8th, 1848.

SIR: Herewith I transmit a copy of a letter of the fourth instant, from the honorable Secretary of the Interior, to this office, calling for

the return of the patent issued 25th March, eighteen hundred and fifty-two, as recorded, vol. 2, pages 172 to 178, inclusive, in favor of Joseph Brazeau or his legal representatives—survey No. 3332, T. 45 N., R. 7 E., 5th pr. meridian, Mo., which was sent to you April 30th, 1852, for delivery to the party entitled to receive it.

Very respectfully, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

A. RENARD, Esq., *Recorder of Land Titles, St. Louis, Mo.*

Stipulation.

30th. A stipulation entered of record in the former suit, between the same parties, as follows: It was admitted that the recorder of land titles, in pursuance of instructions from the Commissioner of the General Land Office, returned to the last-named office the patent which has been issued on survey 3332, to Joseph Brazeau, before this cause was set down for trial at the present term of this court.

On behalf of defendants, it was admitted that Louis G. Picot claimed to be a representative of Joseph Brazeau, as to said reservation,
111 demanded in eighteen hundred and fifty-six, the patent to Brazeau, of the recorder of land titles, but said recorder refused to give it to him, as he was not a legal representative of Brazeau. It was further admitted that when said Picot made said demand he was the trustee of Ann Biddle, who was an original stockholder in the Marine Railway Company, and to whom the said company conveyed two lots in the year eighteen hundred and forty-one, and which lots are situate within the United States survey No. 3332, in the name of Joseph Brazeau.

31st. Petition of Antoine Roy, of 4th July, 1797; order of Zenon Trudeau, thereon, 5th July, 1797; report of the engineer, of the 6th of July, 1797; Charles Howard's order of the 7th July, 1797; Zenon Trudeau's order of 7th July, 1797, for Soulard to give possession; Antoine Soulard's report of 12th July, 1797; Zenon Trudeau's final order and grant of 4th August, 1797, and Antoine Soulard's survey for Roy, 7th June, 1803, as follows:

Petition of A. Roy, of July 4, 1797.

To the LIEUTENANT GOVERNOR:

SIR: Antoine Roy, inhabitant of this town of St. Louis, with most profound respect, shews that since you have had the goodness to grant to him a place for building a windwill, and Messieurs the engineers having found that it would injure the fortifications of the town, prays you, Monsieur, that will grant to him six hundred feet square of land fronting eastwardly upon the Mississippi, and at a distance of three hundred fathoms from the Half Moon, that he may be able to build the same immediately: a favor which he hopes from your justice.

St. Louis, Illinois, July 4, 1797.

ANTOINE ROY.

Order of Zenon Trudeau thereon.

Order of Zenon Trudeau:

ST. LOUIS, *July* 5, 1797.

The lot demanded appearing to be among those situated near the fortifications of this town, Monsieur, the military commandant of Upper

Louisiana is willing that Messieurs the engineers shall visit the same, that he, himself, may ascertain if it can be conceded without injury to the defence of the said fortifications, before the demand therefor may be acted upon.

(Signed) ZENON TRUDEAU.

ST. LOUIS OF ILLINOIS, *5th of July*, 1797.

The engineers will report to me upon the foregoing.

(Signed) HOWARD.

Report of the engineers of 6th July, 1797:

Report of engineers of 6th July, 1797.

In consequence of the above order, dated July 5th, seventeen hundred and ninety-seven, we, engineers of the King, undersigned, en
112 gaged in the construction of fortifications in Upper Louisiana, went on the ground which makes the subject of this petition of the other side, in order to examine if the mill, which Mr. Roy proposes to build there, can prejudice the place by its position. Although we have discovered that the land mentioned in the petition, as being three hundred toises (a toise is a fathom or six feet) from the Half Moon, (Demi Lune,) is in strictness only two hundred and forty-six toises, and that the distance is much within the limit prescribed by the ordinances; we, nevertheless, believe that the mill in question may be built on the said land without damaging the town; the surrounding country offering to the enemy on the same side positions nearer to the town, from which he may injure the defences with greater effect, and he would never elect as a place for his battery, a tower of only ten feet in diameter, and a thickness proportioned to the purposes for which it is designed and which may be readily destroyed by the artillery of the fort, since the heights between (the land) and the fort will present points nearer the fort, and which may in a few hours be rendered fit for receiving the artillery of the beseigers.

St. Louis, July 6, 1797.

DEFEMELS.
L. VAN DEN BINDEN.

Charles Howard's order.

ST. LOUIS OF ILLINOIS, *the 7th July*, 1797.

I accede to the above demand, under the conditions expressed by th engineers, and this document is to be deposited in the archives of the lieutenant governor, who will give a certified copy thereof to the interested party.

(Signed) CHARLES HOWARD.

Order of Zenon Trudeau, 7th of July, 1797:

Order of Zenon Trudeau.

Inasmuch as the lot demanded by Antoine Roy is vacant and a portion of the domain of the King, Mr. Soulard, in his capacity of surveyor of this jurisdiction, shall give possession of the same to the said petitioner, and hereinbelow make of the same a process verbal, which shall

serve to deliver to him the concession which he demands, and the whole to be completed to the governor.

(Signed) ZENON TRUDEAU.

Antoine Soulard's report, 12th July, 1797:

Antoine Soulard's report of 12 *July*, 1797.

I have the honor to report to Monsieur the lieutenant governor, that by virtue of his decree hereabove I proceeded upon the land of Mr. Antoine Roy for the purpose of surveying it, and, as was my duty, I called on Mr. Jaques Clamorgan, his nearest neighbor, who notified me that the land upon which I was about to commence operations had been conceded to him by many years since, and prayed me to suspend my operations until you would be please' to order otherwise; that, however, inasmuch at Mr. Roy had intended to build a mill, (he was willing to further his purpose,) to abandon an arpent front by the depth that might suit him.

113

(Signed) ANTOINE SOULARD.

Zenon Trudeau's final order of 4th August, 1797, as follows:

Zenon Trudeau's final order of 4 *Aug.*, 1797.

Inasmuch as Mr. Clamorgan has not done any work on the land to which he pretends, and that the delay granted to begin improvements has expired, without ever his having contributed to any charge, Mr. Antoine Roy shall have the preference to the same ground to the extent asked for by him.

(Signed) ZENON TRUDEAU.

A copy conformable to the original deposited in the archives of this command.

ZENON TRUDEAU.

St. Louis, the 15th July, 1799.

Antoine Soulard's survey of 7th June, 1803, as follows:

Antoine Soulard's survey of 7 *June*, 1803.

(Here follows map marked page 113.)

I, Don Antoine Soulard, surveyor general of Upper Louisiana, do certify that on the tenth of March of this present year, (in virtue of the decree hereunto annexed, of the lieutenant governor of Upper Louisiana, Don Zenon Trudeau, dated the 7th of July, seventeen hundred and ninety-seven,) I went on the land of Mr. Antoine Roy to survey the same, according to his demand, for eleven arpents and fifty-eight perches (58) in superficies. The said survey was executed in the presence of the owner and his adjoining neighbors, with the perch of Paris, 18 feet long, according to the custom of surveying lands in the provence of Louisiana, and without regard to the variations of the needle, which is seven degrees and thirty minutes east, as appears from the foregoing plat. The said land is situated at about 8 or 9 arpents north from the town of St. Louis, and is bounded on the north by the land of Mr. Peter Chouteau, south by the land of Mr. Hyacinth Egliz, east by the banks of the Mississippi River, and east by the said land of Mr. Egliz; and in

order that the whole may be available whenever needed, I give the present certificate and foregoing plat on which are shown the dimensions of said land, and the limits both natural and artificial thereof.

St. Louis, of Illinois, the 7th day of June, 1803.

ANTOINE SOULARD,
Surveyor General.

(See record, Book D, p. 147, 148, 149.)

I have correctly translated the foregoing.

ADOLPH RENARD,
Recorder.

114 32nd. Letter of E. T. Langham to Conway, of 9th March, 1833, as follows:

Letter of E. T. Langham to Conway.

SURVEYOR'S OFFICE,
St. Louis, 9th March, 1833.

SIR: A certified copy of the record of a survey in the name of Louis Labeaume for 360 arpents of land, which issued from this office on the 24th of October last, at the instance of the present claimant thereof, for the purpose of procuring a patent, and which possesses the required indication of approval by my predecessor, Gen'l Rector, has been returned with the following words, believed to be in your handwriting, endorsed on a paper enveloping the same: "Survey not made in conformity with the confirmation, consequently the patent certificate cannot issue." I have to request, in case the endorsement on said envelope is yours, that you will make it official by your official signature, and that you will distinctly state all the points in which said survey is at variance, as respects conformity with the confirmation, in order that I may resurvey the claim, if necessary, and said claimant requires it. The survey and envelope are both enclosed, in order that you may comply with my request in regard to them, if you shall thing proper to do so.

I am, sir, very respectfully, your obedient servant,

C. T. LANGHAM.

F. R. CONWAY, Esq.,
Recorder of Land Titles.

33d. Letter of Conway to Langham, of 23d March, 1833, as follows:

Letter of Conway to Langham.

RECORDER'S OFFICE,
St. Louis, March 23rd, 1833.

SIR: Your letter of the 9th instant, in relation to the survey of Louis Labeaume, has been received. You will herewith receive a copy of a conformation of the claim of Louis Labaume, and that of Joseph Brazeau, together with a certified translation of the concession to Labeaume, referred to in the confirmation, with a plat and a translation of the survey made under said concession and a translation of a certificate of Zenon Trudeau, lieut. governor, in relation to the sale from Brazeau to Labeaume, which certificate, you will observe, states that the deed from Brazeau to Labeaume is deposited in the archives of the post of St. Louis, to where I now refer you for a description of the reservation made in said deed, &c. I see nothing which would warrant

the issuing of a patent certificate to the representatives of Labeaume for the land confirmed to Brazeau, but am of opinion that there
115 should be two surveys—the one of 356 arpents for Labeaume's representatives, and the other of 4 arpents for Brazeau's *or* representatives. The survey of Labeaume is herewith returned.

Very respectfully, sir, your obedient servant,

[SEAL.] F. R. CONWAY.

E. T. LANGHAM, Esq.,
U. S. Surveyor of Public Lands, St. Louis, Mo.

34th. Letter of the Secretary of the Interior, Caleb Smith, ordering survey for Brazeau's representatives, north of Labeaume's ditch, April 9, 1862, as follows:

Letter of Secretary of the Interior to ordering survey for Brazeau's rep's.

DEPARTMENT OF THE INTERIOR,
Wash., April 9, 1862.

SIR: I herewith return the papers connected with the application of John Magwire, for a resurvey of certain lands in the city of St. Louis, transmitted to this Department with your letter of June 14th, 1861, with my views of the case. On the twenty-fifth day of June, seventeen hundred and ninety-four, the Spanish government conceded to Joseph Brazeau four arpents in front by twenty arpents in depth, on the river Mississippi.

On the 9th of May, seventeen hundred and ninety-eight, Brazeau conveyed his tract of land to Louis Labeaume, reserving to himself four by four arpents of land in the south part thereof, to be taken at the "foot of the hill." On the 22d Sept., eighteen hundred and ten, the conceded lands were confirmed to the parties by the proper commissioners; that is to say, there was confirmed to Brazeau four by four arpents, to be surveyed agreeably to a reserve made in the sale of Brazeau to Labeaume, and there was confirmed to Labeaume the residue of the tract conceded to Brazeau, with a much larger tract adjacent west and north; in all three hundred and fifty-six arpents.

On the 14th June, eighteen hundred and eleven, the commissioners issued a patent certificate for the four by four arpents of land reserved by Brazeau from his concession in his transfer to Labeaume. The lands were surveyed on various occasions by authority of the Government, all of which surveys located Brazeau's reserved tract north of a certain ditch which it is supposed Labaume had made. On the 25th July, eighteen hundred and fifty-one, the Secretary of the Department of the Interior, upon the application of the representatives of Labeaume, ordered that the tract of land confirmed to Labeaume, which had been in part conceded to him and in part purchased of Brazeau, should be located immediately north and west of the ditch before mentioned, and that the confirmation to Brazeau should be located south of that ditch, and surveys were ordered accordingly, which being made in accordance with the directions of the Secretary and returned to the proper
116 department, were confirmed, and patents were, under the further directions of the Secretary, issued in accordance with said surveys. That for Brazeau's representatives was forwarded to the recorder at St. Louis, and it appears that upon the same coming to the knowledge of Magwire, who claims to be the representative of Brazeau, he repudiated it, and the patent was recalled by direction of the Secretary.

Now, Magwire asks for a survey of the confirmed concession of the

Brazeau tract, alledging that he is the remote grantee of Brazeau, and he claims that the survey directed to be made of the four by four reserved arpents shall be located north of the Labeaume ditch. It is also represented by other parties who are mostly interested in maintaining the title of Labeaume:

1st. That Magwire is not the proper representative of Brazeau.

2d. That the action of the Department in directing the particular place where the survey of Brazeau should be made, is final; and—

3d. That in point of fact it clearly appears that the order of survey of the 25th of July, eighteen hundred and fifty-one, was proper and upon the proper tract of land; so that if it shall be determined that the application shall be heard at all, yet that the survey is so manifestly correct that the application should be rejected. It is fairly to be presumed, from the papers on file in this Department, that the right to have the title perfected, and to control it when perfected, is in Magwire, subject of course to the rights of his cestui que trusts.

He denies his rights through an apparently regular chain of conveyances from Brazeau; he has the deed of Col. O'Fallon, the surviving trustee of the Marine Railway Co., and also the deed of the company, which it is admitted by all parties succeeded to the right of Brazeau. This Department cannot undertake to inquire into the validity of his right, or determine whether he is exercising his power for the interest or according to the will of his constituents, or indeed whether, if he shall set up any right under the patent to be issued, he will be able in a court of justice to maintain it; he appears, from the papers exhibited to this Department, to have the controlling right, which is sufficient to justify his application for a survey. Respecting the former action of this Department, it cannot be held to be binding upon Brazeau's representatives, because it was had without their solicitation and at the instance of parties claiming the land in dispute by virtue of the concessions and confirmation of Labeaume. That proceeding was necessarily ex parte; the last of a series of acts which was requisite to complete the legal title under the concession; and surely it cannot be maintained that the Secretary had the power at such stage of the proceedings to absolutely determine the conflicting rights of the parties to land. His decision, so far as it affected the Government and the party applying for the survey, would, it is presumed, be final, but not binding upon a third party, if by chance his confirmed concession should happen to be ordered to be surveyed and patented to another. The party
117 demanding such survey and patent must be held to take it at his peril.

We are confirmed in this conclusion by the late decision of the Supreme Court of the United States between the parties contesting here concerning this question, in which it is said that upon Brazeau's representatives refusing to accept the patent issued under the decision of the Secretary in eighteen hundred and fifty-one, "his claim therefore stands before the court as it existed in eighteen hundred and ten, when the board of commissioners confirmed it as valid." This being an authoritative exposition of the statutes respecting the power and duty of this Department upon the subject, without further hesitation we proceed to the consideration of the last proposition, viz: Was the survey of the tract south of the Labeaume ditch, made under the order of the Secretary, of date of July 25, eighteen hundred and fifty-one, the proper survey of the Brazeau confirmation and to which he was entitled in "eighteen hundred and ten, when the board of commissioners confirmed it as valid?" This is much contested and may be admitted is not without doubt, but there are some

leading facts and considerations which is believed must control the question. Brazeau's confirmation was bounded on the south by the tract conceded to Esther; she petitioned for four arpents by twenty, to be conceded to her "to be between the Earth Barn and the bluff of the Mississippi." The certificate of the grant and confirmation all follow the description of the petition. The plat annexed to her petition shows that her north line was some distance above the summit of the mound, and apparently at the foot of the hill. The confirmation was made by the commissioners in eighteen hundred and thirty-three, and by act of Congress, July 4, 1836, vol. 5, Land B. Ed., p. 126; the act of the commissioners was made valid and a patent directed to issue upon the presentation of the proper certificate provided by the third section of the acts. Brazeau's petition asked for land to commence "at the foot of the hill." In some of the title papers it is described as being located beyond "the mound." And in his reservation in his deed to Labeaume, he describes it as "four arpents of land to be taken at the *l*oot of the hillock in the southern part of said land." It further appears that Mr. Chouteau, who had purchased Brazeau's interest, and had also succeeded to the proprietorship of the land south to Roy's line, in eighteen hundred and twenty-six, conveyed the two tracts of land to George F. Strother, and in the description of the last named tract, Labeaume's ditch is made the north line, and the Brazeau tract is described as "one other tract of land, containing four arpents, running on the river and running back four arpents, making sixteen arpents, lying between the north line of the first described tract of land and the south boundary of the tract of land sold by Joseph Brazeau to Labeaume." And it also appears that all the parties claiming an interest in, or the right to assert title to the Brazeau reservation of four by four arpents, have at all times claimed that it was located north of the ditch of Labeaume, till of late it appears
118 that one or two persons representing a minor portion of the stock of the Marine Railway Company, in which the equity was vested, have desired that the Brazeau tract shall be located south of the ditch of Labeaume. But Magwire, representing much of the largest interest, demands that it shall be located north of the ditch, which, if done, will be in conformity to all the surveys and desc'iptions of location by the proprietors anterior to the 25th of July, 1851. This is the first direct application for a survey and location of the four arpents confirmed to Brazeau which has been made to this Department.

As before stated, the order of the 25 July, 1851, was made at the instance of parties whose interests were necessarily hostile to that of Brazeau's representatives. Their effort, if finally successful, has relieved all the land north of the ditch of Brazeau's claim. Important interests cannot be thus summarily disposed of. Labeaume's representatives took the survey at the hazard of its covering the tract reserved by and confirmed to Brazeau, and we now have the authority of the Supreme Court that Brazeau's stands as it did in 1810. Magwire, representing that title, claims that the survey shall be made of the four arpents north of the ditch of Labeaume; that a survey there made will conform to the reservation, and that if made south of it, will be upon the land granted and confirmed to Esther. In this conflict of evidence and claim of title, it is impossible for the Department to arrive at judicial certainty. It is only certain that Brazeau's representatives are entitled to four arpents of land. It was the second concession, and must be located at the "foot of" and "beyond" the mound, whether the proper location will take it beyond and north of the ditch, is the point in dispute. Labeaume's representatives demand that the matter shall be—nay, more, that it has been, definitely

settled here in their favor, thus depriving Brazeau's representatives of all opportunity to contest here, or in the courts, the true and proper location. Brazeau's representatives contend that it shall be located north of the ditch, professing to apprehend that a location south will be upon the grant to Esther, whose representatives will have the superior title. In cases of doubt and so much uncertainty, it appears to be most reasonable that the party asking the survey shall be permitted to elect upon which tract he will have it made, it being supposed that the survey when made and approved upon the request of the parties, exhausts the power of the Department in the premises. He therefore takes it at his peril. If in this instance it shall prove to be made upon the land of Lebeaume, or, in other words, if the reservation made by Brazeau was in fact south of the ditch, neither the survey nor the patent will be effective for any purpose, but if it shall prove to be upon the true location, it is presumed that Brazeau's representatives can and ought, notwithstanding the survey and patent to Labeaume, maintain their title to the survey now directed. A survey of the four by four arpents confirmed to Brazeau, to be taken from the southeast part of the tract surveyed to Labeaume by Soulard, and resurveyed by Brown in eighteen hundred and
119 seventeen, is therefore ordered and referred to the Commissioner of the General Land Office to have survey made in accordance with this order.

CALEB B. SMITH, *Secretary.*

To the COMMISSIONER GENERAL LAND OFFICE.

Certificate of Comm'r of Gen'l Land Office.

GENERAL LAND OFFICE, *April* 16, 1863.

I, James M. Edmonds, Commissioner of the General Land Office, do hereby certify that the annexed, on pages 1 to 10 inclusive, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[L. S.] J. M. EDMONDS,
Commissioner of the General Land Office.

36th. Letter of instructions by E. T. Langham, surveyor general, to Joseph C. Brown, dated May 2d, 1833, as follows:

Letter of instructions to Brown by E. T. Langham, S. G.

SURVEYOR'S OFFICE, ST. LOUIS, *May* 2, 1863.

SIR: The recorder of land titles in the State of Missouri, having refused to issue a patent certificate on a survey of 360 arpents of land, situate in township No. 45 north of the base line of range No. 7 east of the 5th principal meridian, which survey was executed by you in the month of November, 1817, the same is herewith returned to you, and with it you will receive his letter to me on the subject, and the copies of the same papers furnished by him to this office for a resurvey of the claim. By reason of the above-mentioned refusal on the part of the recorder of land titles, and in compliance with the above-mentioned application of the present claimant of said land, you are hereby authorized to resurvey the same. As it appears from the said letter of the recorder of land titles that his only objection to the present survey of the above-

mentioned claim arises from the fact of its including four arpents of land confirmed to Joseph Brazeau, and as I am satisfied of the correctness of said survey, except that it contains an excess in quantity, you will, in executing the resurvey which you are hereby authorized to make, conform, as near as the confirmation will permit, to your former survey of said claim, including only within the lines of your survey, as near as may be practicable, the exact quantity of 356 arpents of land. You will find among the copies furnished by the recorder of land titles, a copy of the confirmation duly authenticated. It is believed no instructions other than the foregoing are necessary to give you on this occasion, as your perfect knowledge of everything requires to be done in such cases, insures such a return as cannot fail to be approved.

Your obedient servant,

E. T. LANGHAM,
Surveyor of Pub. Lands in the States of Illinois and Missouri.

120 37th. Testimony and deposition of William H. Cozzens, as follows:

Testimony and deposition of Wm. H. Cozzens.

William H. Cozzens, called by plaintiff, testified that he was a practical surveyor, and had been for twenty-two years; that he was familiar with the lands in and about St. Louis; that he was familiar with the concession to Brazeau, in the northern part of the town, now city of St. Louis, and also that he was familiar with the extended concession to Lebeaume; that he was familiar with the plats of said concessions in the office of the recorder of land titles. It has been ten or twelve years since I traced these lines, and I have not made myself very familiar with them lately. Plaintiff then exhibited to witness survey of confirmation, certificates No. 982 and 983, made by C. Brown, in eighteen hundred and seventeen; also the proceedings of the board of commissioners, under the act of Congress for the adjustment of land titles, on the claims respectively of Joseph Brazeau and Louis Lebeaume; also a plat or map annexed to the survey by N. F. Heyer; also the concession to Esther, by the Spanish government; also a deed from Joseph Brazeau to Louis Labeaume, dated May 9th, seventeen hundred and ninety-eight. Witness having examined all these papers and documents, says he is familiar with all of them, that he is familiar with the lines and boundaries of the tracts of land referred to. Witness was then asked by plaintiff, with these lines and papers before him, to designate and point out the boundary lines of the four by twenty arpents of land confirmed to said Joseph Brazeau. Witness, in answer to this question, states that he had measured the ground between what are called Labeaume's north and south ditches, and found them distant from each other about 20 arpents; witness knew these ditches in 1831. Rocky Branch had a rocky bottom and high bank; the descent on the south side was seven or eight feet, on the north side very steep. Had had a mill there; the northern ditch was out a short distance south of that, at the corner of Cerre's concession; the ditch ran to the river; from the upper or northern to the southern ditch, 'here had been cultivation. The ditch did not include the triangle above it. If the four by twenty arpents conceded to Brazeau were to commence at the north end of the concession to Esther, the south end to be bounded by Esther, then I should locate the 4 by 20 arpents north of Labeaume's south ditch. There was no survey of the Esther grant. I should, in such case, commence at La-

beaume's south ditch, and run north the distance of 20 arpents; and inasmuch as Brazeau reserved 4 arpents out of his grant, the reservation would come out of the south end of the tract of 4 by 20 arpents; the reservation of 4 arpents would be bounded on the south by Labeaume's south ditch, on the north by a line four arpents north of the south ditch, east by the Mississippi, and on the west by a line four arpents west from the west bank of said river; the river at that point has a rocky bank and has been so since witness has know' the premises, and he has know' them since 1831. The south line of the 4 by 20
121 arpents, as granted to Joseph Brazeau, is beyond the mound called La Grange de Terre, at the north end of the grant to the mulatress Esther. The whole of the said 4 by 20 arpents is north of the south ditch of Labeaume and the south ditch is the south line of said 4 by 20 arpents.

On cross-examination, the witness stated that he recollected testifiying in the case of Magwire vs. Vice, in eighteen hundred and fifty-three, in the court of common pleas. Here, reporter's notes of Cozzens, at page 66, are read to the witness as follows:

William H. Cozzens, being sworn on behalf of defendants, says: I am a land surveyor and have been so since eighteen hundred and thirty-six, and always at St. Louis. Commenced serving my time under Rene Paul, former city engineer and county surveyor. Paul was an old surveyor; had been in St. Louis in eighteen hundred and eight or nine. I know the locasion of all the Spanish grants north of the Spanish town of St. Louis. I was shown the position of the "Demi Lune" by Rene Paul, an' saw it afterwards with Brown. It is on the northeast corner of Block 16, south of Cherry street, about 40 feet south of Cherry street, and 60 or 70 feet from the west side of Front street; it stood on a projection of rock; the site is now destroyed by the rock taken away by Mullanphy. I know *were* where Roy's mill is; remains *is* still standing on the Roy tract, between Biddle and Ashley street. Witness shown a tract of all the lands north of St. Louis, marked diagram "A." From the north edge of Cherry street, it is 1,507½ English feet, in a direct line, to Roy's windmill; Demi Lune is forty feet south of south side of Cherry street; Cherry is about 32½ feet wide; 100 French feet makes 106 94-100 English feet; from Demi Lune (old fort) to Roy's windmill is 1,579½ feet. It is from the southeast corner of Roy's south line to Labeaume's south ditch, about 23 arpents distant. From Roy's windmill (north side of it) to Labeaume's ditch is about 21 arpents. The windmill is about two arpents south of Roy's north line. From Roy's tower (windmill) to Roy's south line is about one arpent distant along the river front; from the southeast corner of Roy's tract to ditch is 24 and about 23 from southwest corner.

Question. From north foot of Big Mound, along the front line of common fields, to Labeaume's south ditch, what is the distance?

Answer. A little rising of 4 arpents; probably 20 or 35 feet over 4 arpents. I have measured from the north foot of the Big Mound to the river.

Question. From the east line of common field, and running from the north foot of the mound to the river, parallel to the ditch, what will be the number of arpents included?

Answer. About twenty arpents superficial measure. I have known the Big Mound well since eighteen hundred and thirty and '4. In approaching the mound, from the river front, the ground rises gently until it comes nearly to the foot of the mount, and just at the foot presents a very abrupt rise, and in that abrupt rise stands the Big Mound. The

mile starting south of mound *form* Howard street northward, curving
a little to the west, and passing eastward around the east spur of
122 the mound, then passing in a northwest direction over Broadway,
to the sout'west corner of the ditch. This description gives the line of the brow of the hill. The descent from this line to the first plateau was very abrupt, some fifteen or twenty feet of a fall. From the face of the ridge, just described, it was about sixty-six feet to the foot of the hill. From the foot of the hill, the ground descends to river and north of Labeaume's ditch by regular gentle plateau both ways. The water would run eastward and northward from the mound; I should think, northward clears to the ditch. It was a drain. There were two bridges on the ditch; the remnants of one can be seen yet. The hill was not an inclined plane; it was terraced. The plateaus were almost level. The descent of plateau not perceptible to naked eye.

Question. As a surveyor, how would proceed to ascertain the foot of the hill, where the mound stands, and how locate the foot of the hill?

Answer. The foot of the hill where the mound stands is at the termination of the ridge first described. I have traced the lines of Labeaume's survey No. 2300. The old Bellefountaine road was on the top of the ridge, west of the Big Mound, as far as Labeaume's south ditch, and then ascended the hill and ran along the base of the ridge west of Labeaume's ditch to the northwest corner of ditch, and then turned east to the crossing Thabb's ford (of the Rocky Branch.)

Question. Have you any idea where that road began to descend into the Rocky Branch?

Answer. It began to descend from the point G, on Heyer's map, towards the creek. This descent was very sudden, and was north of where the bridge now is. Since my time, there have been great changes; there the road has had two positions; I have examined where letter N is, on Heyer's map, at the southwest corner of the ditches. In the quadrangle from that corner, there are 42 70-100 arpents that was measured to the bluff bank of the river. From the ford to the river and up the river to the Rocky Branch, to the point of beginning, 22 29-100 arpents, I first traced the lines of Soulard's survey, in eighteen hundred and thirty-nine, with Mr. Brown. I assisted Mr. Brown. This was the first time I went around those lines. I have been round this survey since, frequently; from three to five times a year. I have traced the connection of these surveys south of Labeaume's tract; have made them all; had certified copies of maps when I made these surveys; I read French, but not fluently.

(Witness shown Labeaume's petition, Brazeau's, Chouteau's, Roy's, Esther's, and deeds from Brazeau to Chouteau, and from Brazeau to Labeaume, and translations of them all; also United States connected plat.)

From my knowledge, as a surveyor, I locate the concession to Brazeau, containing four by twenty arpents, as follows: I first go to the foot of
the hill on which stands the Big Mound. (Letter H from centre of
123 H.) Thence in going up the river, as far as the environs of Rocky
Branch, twenty arpents in length. At the termination of the twenty arpents I would stop. That line should be parallel with the general direction of the river. I locate from Brazeau's deed to Labeaume, the reservation of four arpents as four lineal arpents, on the south end of the Brazeau tract, as first located; this being the south end of the reservation to H, on Heyer's map, and south of the ditch. The tract bought by Labeaume of Brazeau, I would locate between the north and south ditches. I locate the Labeaume extension, according to the con-

cession to Labeaume, and the deed from Brazeau to Labeaume taken together: 1st, by extending the north line of Brazeau's concession westwardly and the south line of Brazeau's conveyance to Labeaume westwardly, and including the angle between Brazeau's west line, the river and the creek to make the quantity; Soulard's survey of Labeaume corresponds to the closed lines of the Labeaume tract, on Heyer's map. The Esther concession.—The north end of it, between the river and the mound, north line; at the end of Brazeau's concession, at letter H, I should then descend the river for quantity twenty arpents in length. It would cover the whole of Roy's tract. Christy was on land from eighteen hundred and seventeen until his death. He left children; Mrs. Dean, Smith, Swearingen, Howard, Chirsty and others. Christy claimed to the south ditch, and had fence down to that; Colonel Chambers and Wright had an interest in that tract also. I surveyed some lots for Col. Chambers, in eighteen hundred and forty and forty-one. In that tract I surveyed west of Broadway in eighteen hundred and forty, and at the river in eighteen hundred and forty-one. Chambers had houses near the old brewery buildings, and had tenants in them. He employed me to collect the rents in eighteen hundred and forty. I collected his rents for about one month, but finding that it interfered with my other business, I give it up. At that time, he had four or five tenants on that place. I made the plats and surveys for Mr. Bogy and others.

(Here the witness is shown a paper containing a certified copy of an agreement between Choteau & Strother, dated eighteen hundred and twenty-two.)

I should locate second tract between East Mound street, including street, and Labeaume's south ditch, and east from common fields, and the river. Hempstead street is the first street south of Labeaume street.

Cross-examined:

Hempstead street was laid out in eighteen hundred and thirty-six, by DeWard; is about four hundred and fifty feet long, exclusive of Broadway street; Christy's gate was on the ditch; was on lot No. 48, in block 292, on Heyer's map; was there in eighteen hundred and thirty-nine, or eighteen hundred and forty. I knew Waddingham; he was living in what was called haunted house, on Broadway, near the Big Mound, when I came to St. Louis; he owned a good deal of property there. I began my acquaintance with Chambers in eighteen
124 hundred and thirty-nine or eighteen hundred and forty; surveyed for him along the Rocky Branch in eighteen hundred and forty; in block 288 ran a line for a fence; this is the only surveying made by me in the four by four arpents for him in eighteen hundred and forty; in block No. 292 I measured from street to street, but this since eighteen hundred and forty; have made the survey of but two lots in the four by four for Mr. Chambers. There was a little house in front of the old house in block 288, occupied by Walters in eighteen hundred and forty, and on the river, in the north part of that tract, there was a saw-mill at that time. The line I ran went through that house. There was some buildings in block 292, occupied as a stable, about the middle of the block; also a little house in block 292, about fifty-seven feet north of the ditch, occupied as a residence; in block 288 there was a little row of buildings on the river, about 150 feet north of the ditch. I remember no other buildings in the four by four arpents. Don't know who built those houses; I collected rent from Walters; I called on all the tenants for rent, but did not collect from them; took down their names, &c., and gave the memoranda

to Mr. Chambers. Col. Chambers was an old man when I knew him. (Witness handed Labeaume concession.) As a surveyor, from this concession, I would begin from the descent of the road to the creek, at letter N, on Heyer's map.

Plaintiff offer in cross-examination copy of opinion of Mr. Cozzens in June, eighteen hundred and fifty-one.

From this concession handed me by Mr. Evans at the time I gave that as my opinion, the French in that paper read, "in to the creek," but the French in the original does not read so. If I am governed by the original plat and concession, the northern part of the concession is situated between the little mound and the river, and extends between three and four arpents north of the mound. If Brazeau's four by twenty arpents is put beyond the mound, it would be north of the mound, N. ¼ W. is ¼ of 90° N. 22° W. All the Spanish corner-stones I have found on the high bank of the river; some a little further back. The bank is an original ledge of rocks to the branch; stands now as stood years ago—one hundred years ago—except where it has been interfered with by buildings. I saw Labaume's south ditch in eighteen hundred and thirty-four or eighteen hundred and thirty-five; have crossed it often at those dates. When I surveyed in that neighborhood there was no trace of the "Demi Lune" (old fort) on the south side of Mound street; these were enclosures down to Main street; between the fence and the mound there was an open space. Two year' ago my testimony was taken for perpetuation. Previous to eighteen hundred and fifty I made a survey of the concession to Brazeau, at the instance of Mr. Sturgeon; it may have been in the fall of eighteen hundred and fifty.

Re-examined by defendants:

Peter Chouteau made several surveys himself. August H. Evans drew up the paper which Mr. Lord handed me, and he was acting
125 on behalf of D. D. Page. I don't recollect of having seen the remains of Brazeau's lime-kiln.

By the court:

My written opinion, above referred to, was based on the papers handed me at the time by Mr. Evans. I gave evidence, also, in perpetuation in regard to these matters. Witness supposed his testimony was substantially the same in both instances.

Counsel for defendants show to witness a map, which is annexed to his deposition in perpetuation, and also reads to him his testimony given in perpetuation, as follows:

William H. Cozzens, of lawful age, being produced and sworn and examined on the part of said petitioners, deposeth and saith as follows:

Question. What is your profession?

Answer. That of land surveyor.

The further *token* of these depositions is adjourned until Tuesday morning, August 19, 1851, at the hour of ten o'clock.

M. L. CERRE, *Clerk.*

Pursuant to adjournment, I continue the taking of these depositions, between the hours and at the place in the annexed notice named, this 19th day of August, 1851.

M. L. CERRE.

The examination of William H. Cozzens being resumed, said witness deposeth and says as follows, to wit:

Question. State as to your familiarity with the surveys in and about

St. Louis, and with the surveys and confirmations of French and Spanish grants.

Answer. I am very familiar with all these surveys and concessions; I have had occasion to trace the lines of all of them.

Question. State whether you have been engaged in the making of such surveys; and if so, how long a time.

Answer. I have, for over sixteen years.

Question. State whether you have been engaged in making surveys in reference to a tract of four by twenty arpents granted to Joseph Brazeau, of four by twenty arpents granted to Esther, and of three hundred and sixty arpents, more or less, granted and confirmed to Louis Labeaume, and of other surveys and grants contiguous thereto.

Answer. I have been e'gaged in making such surveys.

Question. Has the result of these surveys been reduced to a plat?

Answer. They have.

Question. Annex such plat to these depositions.

Answer. The plat lettered "A" is a representation of the connection of these surveys.

(Here follows map marked page 125.)

126 *Diagram.*

Showing the Spanish and United States surveys of Louis Labeaume, Pierre Chouteau, Anthony Roy, and those adjoining, and the positions of the Spanish claims of Esther and Brazeau, each 4 x 20 arpents. From the front line of the common field lots, at the north end of the Big Mound, to the river, in a direct line, is 4 arpents and 127 French feet. From the north end of Big Mound, along front line of common fields, to Labeaume's southern ditch, is 4 arpens and 20 French feet. The quantity of land within the square made by the common field line, Labeaume's southern ditch, the river, and a line drawn from the northern foot of the Big Mound, parallel with said ditch, to the river, is $22\frac{51}{100}$ acres, equal to $26\frac{46}{100}$ arpens. The distance, on a straight line along the river, from the eastern end of Labeaume's southern ditch to the mouth of Rocky Branch, is 25 arpens and 66 French feet.

The Big Mound stands on several rises of ground, the steepest and nearest being at the distance of one chain, equal to 66 feet, east of the mound; the second three chains, equal to 198 feet, and the third 7 chains, equal to 462 feet; and on the north of the mound the first rise is at the distance of 4 chains 75 links, equal to $312\frac{1}{2}$ feet, and the third near the ditch. The Half Moon ("Demi Lune") was situated on the front of Cherry street, near the south side; Roy's tower is situated north of the Half Moon, at a distance of 1,578 English feet, from the outer or northern wall or edge of the old Half Moon to the southern wall of Roy's tower or windmill, being 246 toises and 5 inches.

It is 362 feet from south line of Roy's tract to centre of his tower, and 382 feet from the northern line of said tract to centre of tower. "From Labeaume's south ditch to Roy's south line is $22\frac{9}{100}$ arpens, and from said ditch to the tower it is 21 arpens.

"The quantity of land between Labeaume's north ditch and the Rocky Branch is, by careful admeasurement, $42\frac{72}{100}$ arpens. Henry Peyroux, New Madrid, location under certificate No. 184, covered the reservation of Joseph Brazeau and the other grants east of the line of the common fields and south of Labeaume's ditch.

References to the annexed plat of surveys.

AB, BC, CD, DE, EF, FA. Survey No. 2974, Louis Labeaume's grant, and identical on all the lines, except the west line, with Soulard's survey of Spanish grant, 10th April, 1799. Said survey No. 2974 was made, under the confirmation by the United States, in 1817, and the recorder of land titles approved thereof, but excluded the Brazeau reservation from this tract; and this survey was then made identical with the first survey, except on the west line; and the Brazeau reservation was excluded and placed south of the southern ditch of Labeaume, and running to the foot of the Big Mound, according to Brazeau's petition and the reservation in his deed to Labeaume.

Ae, ef, fd, da. Brazeau's 4 x 20 arpens. Grant made 25th June,
127 1794, on petition of first June, same year, for 4 by 20 arpens, to be taken beyond or immediately on the other side of the mound Le Grange de Terre and described in the grant as land extending 20 arpens in a N. N. W. direction from the foot of the little hill where the Grange de Terre is situated.

AB, *Bc, cd, da.* Reservation by Brazeau of 4 by 4 arpens north of the foot of the mound La Grange de Terre, reserves in his deed to Labeaume of 9th May, 1798.

Ah, gh, hd, da. Esther's concession of 4 by 20 arpens, 2d October, 1793; annul'ed in 1797, August 4th, and never surveyed; described this tract as land situated at the north of St. Louis; and that the west part of the concession laid between the barn mound, "La Grange de Terre," and the bank of the Mississippi; thence descending said river as far as the complement and extent of 20 arpents in length.

C, SP, Q. United States survey, No. 671; Peter Chouteau, 93 arpens and 1 perch.

J, K, M, N, the angle containing $42\frac{72}{100}$ acres, formed by the Rocky Branch, Mississippi, and a line from where the old road begins to descend into Rocky Branch perpendicular to the Mississippi.

G, O, J, K, M, N, R, G. Soulard survey of Spanish concession to Labeaume of 374 arpens, made 10th April, 1799. X, Big Mound, La Grange de Terre.

Z, Demi Lune or Half Moon; *x* Roy's tower.

Question. State what letters on that plat represent the location, as made by you, of the Esther grant, what the Brazeau, what the Labeaume, and what the other grants contiguous to these.

Answer. The letters *a, d, h,* and *g* represent the position of the Esther claim of four by twenty arpents; the letters *a, e, f,* and *d,* represent the location of the Brazeau tract of four by twenty arpents; the letters *a, b, i, k, m* and *r,* represent the United States survey, No. 2974, of the Louis Labeaume tract; the letters *q, p, s, t, w,* represent survey No. 671, in the name of Peter Chouteau, for ninety-three arpents and one perch; the letters *v, w, x, y, z,* represent survey No. 181 in the name of Antonie Roy for nine acres and eighty-five hundredths of an acre, the said survey being represented on the annexed plat by a green tint. The figures 1, 2, 3, and the letters *x, w,* and *v,* represent survey No. 1416, in the name of John Mullanphy under H. Eglize. United States surveys No. 331, 372, and 473 are correctly represented on the annexed map.

Question. State whether you know the situation and location of Labeaume's ditches.

Answer. I do.

Question. State whether they be represented on the annexed plat A; and if so, how are represented.

Answer. They are represented on the annexed map by shaded lines, some of which is written "Labeaume's southern ditch," on another "Labeaume's western ditch," and on the third "Labeaume's southern ditch."

128 Question. State whether these lines represent truly the situation of those ditches.

Answer. They do, from actual survey.

Question. State as to the situation of Labeaume's ditch being to surveyors well known or otherwise.

Answer. It is well known to the old surveyors.

Question. State whether you have ever seen any traces of that ditch; if so, when, what they were, how long the' existed, and any other particulars relating thereto.

Answer. I have seen these ditches; I saw them for the first time in eighteen hundred and thirty-three and eighteen hundred and thirty-four. The remains of those ditches could be plainly seen until lately; within the last two or three years; up to eighteen hundred and thirty-five, or eighteen hundred and thirty-six, the tract *the tract* of land within the ditches was inclosed with a rail fence.

Question. To what Spanish survey did you allude in describing the Labeaume tract No. 2974?

Answer. To the survey made by Antoine Soulard, on the 10th of April, seventeen hundred and ninety-nine.

Question. Do you know the situation of the "Demi Lune?"

Answer. I did not know personally, because its remains were removed before my recollection.

Question. State whether the place where it was situated is well known to the surveyors.

Answer. It was well known to two of the old surveyors, Paul and Brown, both of whom have shown its position to me, and the place as designated by them is represented on the annexed plat by letter Z; Paul and Brown are both lately deceased.

Question. Do you know the location of Roy's tower?

Answer. I do.

Question. Do' the annexed Map A show its position correctly?

Answer. It does; the walls are still standing; it is represented said map thus: "O, X, Roy's Tower."

Question. State the distance from Labeaume's ditch to Roy's south line?

Answer. From Labeaume's south ditch to Roy's south line is twenty-two and nine-tenths arpents.

Question. How far is it from Labeaume's south ditch to Roy's tower

Answer. It is twenty-one arpents.

Question. What is the distance from the front line of the common field lots at the north end of Big Mound, in a direct line to the river?

Answer. The distance by measurement is four arpents, and one hundred and twenty-seven French feet.

Question. What is the distance from the north end of the Big Mound along the front line of the common fields to Labeaume's southern ditch?

Answer. Four arpents and twenty French feet.

Question. What is the distance on a straight line between the eastern line of Labeaume's southern ditch, along the river, and Rocky Branch?

129 Answer. Twenty-five arpents and sixty-six French feet.

Question. State what is the distance from Roy's line north and south to the centre of Roy's tower?

Answer. From the south line of Roy's tract to the centre of his tower, is about three hundred and sixty-two feet, and from the northern line of said tract to the centre of the tower is about three hundred and eighty-two feet.

Question. What is the distance from Labeaume's south ditch to Roy's south line?

Answer. Twenty-two arpents and nine-tenths of an arpent.

Question. State what is the quantity of land between Labeaume's north ditch and Rocky Branch, within survey 2974.

Answer. The quantity of land within those limits is, by careful admeasurement, forty-two and seventy-two hu*n*dredths arpents.

Question. What quantity of land is within the square formed by the common field line, Labeaume's ditch, the river and the line drawn from the northern end of the Big Mound, parallel with said ditch to the river?

Answer. The quantity is twenty-six arpents and forty-six hundredths of an arpent.

Question. Describe the character of the surface of the ground around the Big Mound, particularly towards the north and east.

Answer. The Big Mound stands in several rises of ground, the steepest and nearest being at the distance of one chain sixty-six feet east of the mound; the second, three chains, equal to 198 feet; and the third, seven chains, = 462. On the north of the mound the second rise is at the distance of four chains and seventy-five links, = 312½ feet; and the third near the ditch; and the first, three chains and twenty-five links, = 214½ feet from the base of the mound.

Question. Have you ever devoted any attention to the ascertained location of the Esther and Brazeau grants?

Answer. I have paid much attention.

Question. State whether those grants as laid down on the plot are correct and are there located conformably to the grant, in your opinion.

Answer. The Labeaume grant, the Chouteau grant, the Roy and Eglize grant, and others below, are correctly drawn from the United States survey; the grants to Brazeau and Esther are drawn according to their concessions, there being no former surveys either by Soulard or by the United States.

Question. Where is Brazeau's reservation of four by four arpents located with reference to the south ditch of Labeaume; said reservation being made in the deed from Brazeau to Labeaume?

(Objected to by Magwire.)

Answer. Basing my surveys upon the location or position of the Labeaume ditches, I located the reservation below the southern ditch of Labeaume.

Question. What are we to understand you to mean by basing your surveys upon Labeaume's ditches?

130 Answer. Brazeau having a concession of four by twenty arpents, he having reserved four by four, taken off the south end of his concession, I find by measurement that the land between his ditches is a little over sixteen arpents in length, and I find that the north line of the United States and Spanish surveys of the Labeaume tract to be a continuation westward of the north and south ditches; necessarily the reservation, being taken from the south end of the concession, must be below the south ditch.

(That part of this answer is objected to in which he speaks of the deed to Labeaume, or of the reservation in it by Magwire.)

Question. What does the line marked *da*, read on the annexed plat, represent?

Answer. It represents the position of the travelled road previous to the pulling down of the fences within the ditches, of which fences I have before spoken.

Question. State where the descent of land towards Rocky Branch commences with reference to his old road?

Answer. It commences immediately at Labeaume's northern ditch, and descends gently to a point near the northern line of the common fields of St. Louis, whence it descends abruptly to the banks of the creek.

Question. How far back can you recollect that the old road ran in that direction?

Answer. In the years eighteen hundred and thirty-three and eighteen hundred and thirty-four; and down to the present time there are traces of the road.

Question. What is the distance from the Half Moon to Roy's tower in a straight line?

Answer. Fifteen hundred and seventy-eight feet, English measure.

Question. Are the measurements herein given by you, given from your own actual admeasurements, or that of others?

Answer. From my own measurements on the ground.

And being cross-examined by the counsel for Magwire, said deponent said as follows:

Question. When did you last survey the concession to Esther, of four by twenty arpents spoken of by you?

Answer. In the fall of 1850.

Question. When did you last survey the confirmation to Pierre Chouteau?

Answer. In the winter of 1846 and '47.

Question. When did you last survey the concession to Joseph Brazeau of four by twenty arpents?

Answer. In the fall of 1850.

Question. When did you last survey the confirmation to Louis Labeaume of which you have spoken?

Answer. I ran around the whole survey in eighteen hundred and forty-eight, and partially in eighteen hundred and fifty.

Question. When did you last survey the grants contiguous to the Esther concession on the south, to wit: Antoine Roy, Eglize, Yosti, Soulard, and Clamorgan?

131 Answer. In the spring of eighteen hundred and fifty-one, this present year.

Question. At whose instance did you make the last survey of the Esther concession, of which you have spoken?

Answer. Partly at the request of Mr. Isaac H. Sturgeon, A. H. Evans, and Daniel D. Page.

Question. At whose instance did you make the last survey of which you have spoken, of the confirmation to Pierre Chouteau?

Answer. At the instance of Daniel D. Page and A. H. Evans.

Question. At whose instance did you make the survey of which you have spoken, of the concession of four by twenty arpents to Brazeau?

Answer. At the instance of J. H. Sturgeon.

Question. At whose instance did you make the last survey of which you have spoken, of the confirmation to Labeaume?

Answer. At the instance of J. H. Sturgeon, Louis A. Labeaume, Wm. M. McPherson, and Col. John O'Fallon.

Question. Was Map "A," which is exhibited to you and annexed to your deposition, constructed by you?

Answer. No; but it is a copy of one constructed by me.

Question. Where is the original map constructed by you, of which the one annexed is a copy?

Answer. I believe that it is now in the office of B. A. & D. W. Hill.

Question. Was the original map, of which you have spoken, constructed from the connected surveys made from your original field-notes?

Answer. It was.

Question. When was the original map, of which the one hereto annexed is a copy, constructed?

Answer. In the winter of eighteen hundred and fifty.

Question. At whose instance and for whom was the original map constructed?

Answer. It was constructed for myself. There was a copy of it made for Sturgeon.

Question. Did you make this copy?

Answer. I did not. I was requested to make it, but hadn't time.

Question. Have you compared the copy hereto annexed and marked A with the original, to ascertain whether it corresponds to the original in its representations and explanations, and in its lines?

Answer. I have, and it does agree in all except that in the original I have given two locations to the confirmations to Brazeau and Esther.

Question. When did you make the comparison?

Answer. To-day.

Question. On the original map of which you have spoken, and on which you say you made two different locations of the concessions to Esther and Brazeau, state how you made those two different locations on the original map.

Answer. On the original map one location represents the
132 Esther concession as being bounded north by Labeaume's southern ditch, and the Brazeau concession as extending four arpents northward of Labeaume's southern ditch.

Question. In making the survey of the concession to Esther, from what data or calls was that survey made by you?

Answer. It was made from the petition and concession to Esther, and also the concession to Brazeau, assuming the northern ditch of Labeaume as being the northern line of the Brazeau concession.

Question. Were the petition and concession of which you have spoken, and from which you make those surveys, originals, or did they purport to be copies, and who furnished them to you?

Answer. I had seen and read the originals, and had certified copies furnished me by sundry persons.

Question. Upon what data did you make one of the locations of the Esther and Brazeau concessions on the original, constructed by you, which brought the north line of the Esther concession to Labeaume's south ditch, and which extended the Brazeau concession four arpents north of Labeaume's north ditch.

Answer. I was instructed so to do by the parties to a suit in the court of common pleas of St. Louis County, in the year eighteen hundred and forty-six and seven, in which suits Lewis V. Bogy was plaintiff, and Clark & Childs, Dominic Childs, Thomas H. West, and Schoob alias Schoab, were parties defendants.

Question. Had you no data for making one of the locations in that way on the original map constructed by you, except the instructions given you by the above-name' parties, or some of them?

Answer. I had none.

Question. What does the line marked on the annexed plat *a*, *b*, running across the west end of the Labeaume confirmations, represent?

Answer. It represents the western boundary of survey No. 2974, in the name of Louis Labeaume, as surveyed by the United States, in 1817.

Question. What does the line *g*, *o*, on the said plat, and west of the line on said plat, and west of the line last named, and marked *a*, *b*, represent?

Answer. It represents the western boundary of Antoine Soulard's survey of the concession, made in seventeen hundred and ninety-nine.

Question. Have you ever run the lines of the concession to Labeaume according to the calls of the concession to him, with a view to determine its true western boundary, according to the calls of the concession to him?

Answer. I have not.

Question. Can you state, from any survey made by you of the concession to Labeaume, which of the lines *g*, *o*, or *a*, *b*, is the true western boundary of that concession?

Answer. I am of the opinion that the lines *a*, *b*, is the true western boundary line, it being twenty arpents in depth from the river.

133 Question. Is the topography which is represented on Map "A," also represented on the original map constructed by you, of which the Map "A" purports to be a copy?

Answer. It is.

Question. Was the topography represented on Map "A," made from actual survey and observation on the ground, or merely from visual observation?

Answer. It was made from actual survey.

Question. Have you ever run the eastern line of the common field lots in the vicinity of the Grange de Terre?

Answer. I have, at various times.

Question. Does the line represented on the Map "A," by the letters *a*, *b*, and *c*, represent the eastern line of the common field lots of St. Louis, according to your own survey?

Answer. It does.

Question. From what data or calls did you run the line *a*, *b*, and *c*?

Answer. From the original concessions, and the surveys on record in the office of the surveyor general.

Question. Have you ever traced, and do you know where is the line that Joseph C. Brown, late deputy surveyor general, ran and laid down as the *as the* western boundary line, eastern boundary line of the St. Louis common fields?

Answer. I do not know where it is. Mr. Brown never surveyed this line, officially, to my knowledge.

Question. Is the Grange de Terre represented on Map "A," from a topographical survey; and if so, is it correctly represented?

Answer. It is represented from a topographical survey, but not very accurately represented on Map A, being too far west on the Map A.

Question. Can you state the distance between the eastern line of the common fields, as laid down by you, and the western foot of the Grange de Terre?

Answer. This line passes immediately alongside the western base of the Grange de Terre.

Question. How many years is it since your attention was particularly directed to the topography of the Grange de Terre?

Answer. About twelve years.

Question. Was its topography at that time materially different from what it is at present? and if so, state the particulars in which it differs.

Answer. It was not materially different, the country then being open and not incumbered by buildings and enclosures as it now is.

Question. When was your attention first particularly directed to what is called Labeaume's south ditch?

Answer. In the year eighteen hundred and thirty-nine.

Question. What was the topography of the ground at that time, in the immediate vicinity of the ditch, and did it drain all the grounds in that vicinity?

134 Answer. The surrounding country was higher than the ditch, and the ditch served as an outlet or drain for the surface waters.

Question. Was the ditch familiarly called Labeaume's south ditch made alongside of the hill on which La Grange de Terre stood, or was it made at the foot of the Grange de Terre?

Answer. It was made at the foot of the hill on which the Grange de Terre stands.

The further taking of these depositions is adjourned until to-morrow morning, at ten o'clock.

M. L. CERRE, *Clerk.*

In pursuance of the adjournment, I resume the taking of the depositions, this 20th day of August, eighteen hundred and fifty-one, at the place and between the hours in the annexed notice named.

The cross-examination of William H. Cozzens being resumed, deponent saith as follows:

Question. On Map "A" there is a mark indicated by the words "old road;" describe its general direction from where it intersected a (and) crossed Rocky Branch, to where it intersected what is now called Broadway, south of La Grange de Terre, and in your description of its general course aforesaid; describe it, with reference to the present topography of the country, or the present streets or public highways.

Answer. The old traveled road, (when I first knew it, in eighteen hundred and thirty-three,) from its crossing at the creek, bore a southwest course to the northwest corner of Labeaume's ditch. It then ran nearly parallel with the western ditch and enclosure, and between it and the high ground, to the westward, as far as the southwest course of the said ditch; it thence ascended on to the highland, westward of Labeaume's brick residence, and passed immediately west of the Big Mound. The position of the old road is nearly coincident with the present North Tenth street, being about seven hundred feet westward of Broadway. The present topography is generally the same as formerly, as in eighteen hundred and thirty-three.

Question. Is there any line on Map "A" designed to indicate a perpendicular line from the point where the old road descended on the creek called Rocky Branch, to the river? If so, point it out by appropriate letters of identity.

Answer. There is such a line, the dotted line indicated by the letters D and K.

Question. In making a survey of Labeaume's concession, following the calls of the concession to Labeaume, where would you begin to make such survey?

Answer. From the call of that concession, I would begin the survey at the point where the old road, above spoken of, descends into or crosses the creek.

Question. What is the distance from the perpendicular line, indi-
135 cated by the letters D K, following the bank of the river to Labeaume's south ditch; that is to say, how many arpents is it?

Answer. About twenty arpents.

Question. In making a survey of the concession to Joseph Brazeau, following the call thereof, where would you begin to make such survey? Indicate such beginning by proper letters on Map "A."

Answer. I should make the foot of the hill, on which stands La Grange de Terre, my point of commencement, and survey northward towards the Rocky Branch twenty arpents. Indicate the point of beginning by E, this point being the foot of the first highest hill, on which stands La Grange de Terre.

Question. What are the words of the concession which induce you to make the point indicated by "E" the starting point of your survey?

Answer. The words are, "Que commencement au pied des couteau on se touv la sus ditto Grange de Terre," which I thus translate: "Which commences at the foot of the hill where is found the above-mentioned Grange de Terre."

Question. Do you know if there was more than one concession of land in that vicinity to Joseph Brazeau?

Answer. I do not.

Question. What is the date of the concession from which you extract the words which you make the point of beginning of your survey at E, on Map "A?"

Answer. The tenth day of June, seventeen hundred and ninety-four.

Question. If a survey was made of the last-named concession to Joseph Brazeau, according to the calls thereof, what quantity or number of arpents would such survey embrace?

Answer. Not more than twenty arpents in length; eighty arpents superficial.

Question. In the words you have extracted, and made the point of beginning of your survey at E, on Map "F," have you not taken those words from the petition of Joseph Brazeau, instead of the concession to him?

Answer. I did take them from the petition and not from the concession.

Question. In making a survey of concession to Joseph Brazeau, according to the calls of such concession, explain on Map "A," by appropriate indications, where you would begin, and the courses and distances of the line you would run, and the quantity or number of arpents in superfic'es such lines would enclose, (a copy of said concession being hereto annexed, and marked "B.")

Answer. The point of beginning, according to the calls of said concession, is very undetermined, it calling to begin at a point beyond the mound.

Question. At the time you made the surveys of the concessions of land in the vicinity of La Grange de Terre, or either of them, did you have before you either the original concession to Brazeau, or a copy thereof? If yea, state whether you followed or attempted to follow the calls of said concession.

136 Answer. I have already answered that question. I said then that I had seen the originals, and had copies of them. I could

not fix the starting point on the concession, but made use of the calls in the petition of Joseph Brazeau.

Question. State whether you understand, speak, read, and write the French language? If yea, take the words from the concession to Brazeau, in document "B;" "Que commencemont au dela monde nomme La Grange de Terre," and give your translation or interpretation into English of those words.

Answer. I both speak, read, write, and understand the French language, though imperfectly. I translate the above words thus: "Which commences (at a point) beyond the mound called La Grange de Terre."

Question. If you cannot fix the starting point of the calls in the concession to Brazeau, would it be possible for a surveyor to make an accurate survey of said concession according to its call?

Answer. If restricted to the description in the concession it would not be possible.

Question. What is the distance from the point where the old road descends into or crosses Rocky Branch at K, on Map "A," to Labaume, south ditch at "C?"

Answer. The distance is about twenty arpents lineal measure.

Question. What is about the distance in arpents from C on Map "A," at Labeaume's south ditch, to the apex or centre of the Grange de Terre?

Answer. It would be nearly five arpents.

Question. If you were to survey and cut four arpents in front off the south end of the concession to Brazeau, how many arpents would there be between the north line of such four arpents and the perpendicular line B K, on Map "A?"

Answer. About twenty arpents.

Question. Do you mean by your last answer that there would be about twenty arpents front on the river, without including the angle formed by Labaume's north ditch and the perpendicular line B K, on Map "A?"

Answer. I do.

Question. In your direct examination you have spoken of a reservation in Brazeau's deed to Labeaume, of four by four arpents, in the vicinity of the Grange de Terre. State whether you know anything of such reservation except what you have seen in copies of said deed.

Answer. I do not know, except from the calls in such deed.

Question. Have you not frequently surveyed the reservation of four by four arpents spoken of, and located the said four by four arpents north of Labeaume's south ditch?

Answer. I have frequently so surveyed and located it.

Question. Do you remember whether you have ever at any time surveyed and located it north of Labeaume's south ditch, for Martin Thomas?

Answer. I do. I so surveyed and located it for him in eighteen hundred and forty-six.

137 The cross-examination on the part of the counsel for Magwire being concluded, the examination on the part of the petitioners was resumed, as follows:

Question. Are you familiar with the language used in Spanish and French grants?

Answer. I am.

Question. Are not grants of that kind frequently made with no direct calls in the words of the grant, but merely referring to the land as described in the petition?

(Objected to by Magwire, as growing out of the cross-examination.)

Answer. There are many such grants.

Question. Look at Document "B," and the words of the concession to Brazeau, and see whether there is in that concession, besides the calls therein made, any reference to the petition, or to the order putting Brazeau in possession.

Answer. In the said concession I find the words, "Et apres l'avoir mis lu possession nous meins survant l'act que nous avou dresse cidi-vant le 10 du meme mois, nous avois concede et concedent au dit Sieur Joseph Brazeau;" and also the words, "La portion de terre ci divant designe consistait en la quantite de quartre arpents."

Question. In surveying a concession containing such words, if there was any ambiguity in the calls of the concession, would you go outside of the concession to find the land described and referred to in it; and if so, to what would you resort?

Answer. I would; to the petition and order of survey.

Question. State whether these many different surveys, previous to the present one, were made according to your own ideas of how the Brazeau concession should be surveyed, or were they made in accordance with the requirements of the parties who wished the Brazeau grant surveyed in a particular manner.

Answer. They were not surveyed according to my opinions, but in accordance with the request of the parties desiring the survey to be made.

Question. In one of your answers to a question—your cross-examination—you stated you should make the foot of the hill on which stands La Grange de Terre your point of commencement, and survey northward. Now state the size of that hill; its position and elevation; its distance northward and eastward from the mound itself; and the general appearance and elevation of the surface of the country from that hill to Labeaume's south ditch.

Answer. The hill on which stands the Grange de Terre extends one chain eastward of the eastern base of the said Grange de Terre. This hill is on a level with the high lands adjacent to the Big Mound, and is a distinct elevation, projecting farther eastward than the general range of the ridge or bluff. It lies immediately east of the mound, gradually inclining in a northward and southward direction towards the west, in the general range of the said ridge; it is, I think, twelve feet in height from its base to its highest point. From the base of the hill the ground gradually descends towards the river and Labeaume's ditch.

138 Question. How should you survey a reservation, made out of the concession to Brazeau, in these words: "Se reservant le Sieur Brazeau quatre arpents de terre a prendre au pied du monticule dans la partie sua de la dit terre?"

Answer. I would make the point E, on the Plat A, at the base of the hill on which stands the mound, the place of commencing said survey.

The petitioners having concluded, the following examination was held by the counsel for Magwire:

Question. Where, on Map "A," would you designate the point indicated by the words, "at the foot of the hill on which stands La Grange de Terre?"

Answer. Letter *e*.

Question. What would be the distance from the point indicated by *e*, on Map A, to the apex or centre of the Grange de Terre?

Answer. Nearly one arpent.

And further this deponent saith not.

W'M H. COZZENS.

Testimony of W'm H. Cozzens.

38th. William H. Cozzens, called as a witness by plaintiff, being duly sworn, testified: I have been familiar with the Big Mound for forty years. The levels taken by N. F. Heyer, in eighteen hundred and forty-eight, are represented, on the plat made by him, on a vertical scale of 125 feet to the inch. This scale represents the slope from the Big Mound to the ditch of Labeaume to be ten times greater than it really is. The horizontal line is one-tenth, or ten times shorter than it really is, and the perpendicular lines are ten times higher than they really are; the greatest depression is at Labaume's ditch, from the Big Mound, going north. From Labeaume's ditch to the Big Mound is four arpents and twenty French feet, going south. Antoine Roy's north line is coincident with the southern line of Pierre Chateau's concession; there never has been any dispute about that line. Esther's north line, as surveyed in survey No. 3342, coincide with Labeaume's south ditch. From Labaume's south ditch the Esther tract runs southwardly, and laps over Roy's tract about one arpent; from Roy's north line to Labeaume's south ditch is about nineteen arpents; the exact distance between those two points appears on Esther's survey. I made Esther's survey for the United States with great accuracy.

The Esther survey being shown witness, he states that the distance between Roy's north line and Labeaume's south ditch is 3,617 feet, English. Esther's grant extends four arpents beyond the mound, northwardly.

Pierre Chouteau's north line, by Spanish survey, is coincident with the south ditch of Labeaume; by actual survey from Labeaume's south ditch, twenty arpents north will bring you to the descent of the road '39 into the Rocky Branch, by following the west line of Brazeau's four by twenty arpents. I know where the four by twenty arpents of Brazeau's reservation is located by the last survey of 1862, by the United States, and I know all the improvements; they are indicated by the plat now shown to the witness, which plat is as follows:

(Here follows map marked page 138.)

The houses noted on the map are all small; the buildings are old, and have been these fifteen years or more; there is one recent building. Buildings on the sixteen arpents are worth, say two thousand dollars; when new, they were worth 5,000 dollars or less. The ditches of Labeaume are sixteen arpents apart.

The diagram made by N. F. Heyer, in eighteen hundred and forty-eight, is shown witness, and he says the measurements given therein are correct. The said diagram is as follows:

On cross-examination witness testified:

There are here two diagrams shown to me as a witness, being profiles of the topographical measurement, from the Big Mound to the south ditch of Labeaume. The said profiles are as follows:

(Here follows map marked page 139.)

Both of these profiles are most emphatically correct. The fall from the Big Mound to the ditch is forty-eight and one-half feet. The mound is about thirty feet above the base of the hill on which it stands. One of the profiles is made on a scale that magnifies the vertical lines ten times. This is Heyer's profile; my profile represents the lines as they exist on the ground.

39th. Petition of Pierre Chouteau to Zenon Trudeau, 15th October, 1799. Order of survey by Trudeau of 19th October, 1799. Spanish survey by Antoine Soulard, and plat for Pierre Chouteau, as follows:

Petition of P. Chouteau, 15 Oct. 1799, to Delassus.

A Don Carlos Dehault Delassus, Lieutenant Colonel aggrege, au Regmt. fixe de la Louisiana and lieutenant governor de la partie haute de la meme provence Don Pedro Chouteau, sr., de milice et commandant du fort Carondelet, chez les nation des Osages a l'honnar de vous representer que la mangue total demonlins a farine dans ce pays, et la necessite que present la diminution visible due commerce des polleteries sont les raisones qui leu ont fait concevoir le projet de si livrer a celui plus durable des grains et que en meme tems procuerra au cultivateur au debouche moins precaire que celui qu'ils ont on jusque a present, a cencee le projet de la construction et un moulin a farine superfine sur bateau, quil compte placer sur le fleure Mississippi a environ un mile de cette ville, dans au endoit qui la mettra enlierement a l'abri des glaces, mais considerant que pour former cet stablissment tres dispendieux il a beson d'ar emplacement assey vaste pour la construction de ses magazins, &c., en consequence il a honneur de vous supplier et avoir la boute de liu accordee au Sieur Antoine Roy l'stablissement d'un moulin a veut, en annulation des pretentinos de Mr. Jacques Clamorgan sonvait avoir sur la dit terre pour des raisons mentionees dans la decret annexe a la vernee comme il suit au N. par la ligne de la terre de Mr. Louis Labeaume; au end par celle du sieur Ant. Roy, a l'Epas la fleuve et a l'Opar le Don de la majeste; la ditte terre passant sur les cotes et a distance de 6 as, du fleuve, ce qui sera su profondeur, tout a la superficie elle me peut etre determine que pasle arpentage quel vous plaira d'ordonner, Le suppleant espera de son pour le service de S. M. et de votre justice, quil vous plaira favoiriser un establissemente que poura devouir utile au public, en lui accordant la grace qu'il solicite.

St. Louis, 15 F'bre, 1799.

(Signed) PIERRE CHOUTEAU.

Order of survey by Delassus, Oct. 19, 1779.

St. Louis de Illinois,
16 *de F'bre de* 1799.

Visto lo expriesto en el antecedente memorial y en virtul de los justos motivos que representa el supte y en consideracion d un decreto de mi predecessor el Sr. L'te. Col. Don Zenon Trudeau de 4 de Agosto de 1799, puesto al pie del memorial del Sr. Anto Roy de secondo consta que la tierra que sa pied quedaba al Don Real el Agbr de esta Luissiana Alta, Don Antonio Soulard, pondra el exponente en possession de la tierne que solicite, paro que depues de apes y particalos las operacione, convenientes se entreque a la parte la correspondente certificacione de apes, para que la sirra a obtenerel titulo de concecion en forma del Senor Intendente Gen'l de otas provincias a quien par orden de S. M. corresponde primativamente el repartir y cenceder toda chase de tiere seal engas.

(Signed) CARLOS DEHAULT DELASSUS.

Survey by Soulard.

Don Antonio Soulard, agr pr de la Alta Luissiana, certifico que *que*

al 10 de Marzo de este presente ano (in virtud del decreto que acompana del S'or Theute de Gobor, y subdelgado de Re Hacendu Don Carlos Dehault Delassus en fecha de 16 de F'bre del anno 1799) me he transfendo a la tierre de Don Pedro Chouteau para particar el apes areglado a supedimiente de 133 arpens planos engas medr dos se pantomado en presencia del propriatario y de los occinos lindleos con la percha de Paris, de 18 pies de largo segun constoumbe adaptala en esta provincia de la Louisiana, y sui tocar a loque pueda dor desi la variacion de la Aguza qe esde y gos y 30 m. E. cerno consta delplano figuratrivo que antecede: cuya tiene se halla situada como a 12 arps. al norte de esta villa de St. Louis lindado al N. cam tierre de D'n Luis Labeaume al en partida cen tra tiena de Don Antonio Roy, 7 de Jacento Egliz, al E. con la arilla del Rio Mississippi y al O. con la tienas validio del Domo Rael, y paraque conta donde ceruberga le doy el presente con el plano
141 figuratiue que precede, en el qual se implicum los dimencionas y limites naturalos y artificealas que rodeau aba tiena.

(Signed) ANTONIO SOULARD, *Agr.*

The translation of the foregoing petition of Pierre Chouteau is as follows:

Translation of P. Chouteau.—Petition to Delassus, Oct. 15th, 1799.

To Don Carlos Dehault Delassus, lieutenant colonel of the s'ationary regiment of Louisiana, and lieutenant governor of the upper division of the same provence, Don Pierre Chouteau, lieutenant of the militia and commandant of Port Carondelet among the Osage nation, has the honor to represent to you, that the total want of flouring-mills in this country and the necessity which prescribes the visible diminution of the trade in furs, are the reasons which have led him to conceive the project of abandoning this for the more durable one in grain, and which shall procure for the cultivation a less precarious opening than the one which they now have; he has conceived the project of constructing a mill for making superfine flour upon a boat which he intends placing upon the river Mississippi, at about one mile from this town, in a place which will be entirely defended from the ice. But considering that to complete this very expensive establishment, he must have a place sufficiently large for the construction of his store-houses, &c., he consequently has the honor to beg you to have the goodness to grant to him, at the same place above designated, the vacant space of land between that granted to Mr. Antonie Roy, for the establishment of a windmill, and in annulling the pretended claims of Mr. Jacques Clamorgan to the said land, for reasons mentioned in the decree annexed to the petition of the said Monsieur, under date of August 4th, 1797, which is situated and bounded as follows:

(Here follows map marked page 262.)

On the north by the line of Mr. Louis Labeaume; on the south by that of Mr. Antonio Roy; on the east by the river; and on the west by the domain of His Majesty, the said line passing upon the hill at the distance of six arpents from the river, which will be its depth. As to its superficial extent, it can only be determined by actual survey, which it shall please you to order. The petitioner thought, from his zeal in the service of His Majesty, and from your justice, that it will please you to order. The petitioner hopes from his zeal in His Majestys service,

your justice, that it will please you to foster an establishment that may become useful to the public by granting him favor which he solicits.

St. Louis, 15th October, 1799.

(Signed) PIERRE CHOUTEAU.

142 Order of survey for Pierrre Chouteau upon foregoing petition:

Translation of order of survey by Delassus.

ST. LOUIS OF ILLINOIS,
16*th of October*, 1799.

Having seen the statement set forth in the foregoing petition, and in consideration of the just motives advanced by the petitioner, and a decree of my predecessor, we, Lieutenant Governor Don Zenon Trudeau, of the 4th of August, 1797, and written at the foot of the petition of Mr. Antonie Roy, from which it is evident that the land asked for remains reunited with the royal domain, the surveyor of this Upper Louisiana, Don Antonie Soulard, shall put the petitioner in possession of the land asked for, which being done, and the operations of survey completed, he shall deliver to the interested party his certificate thereof, that it may serve to obtain the title of concession in due form. The Intendant General of the provinces, to whom alone, by order of His Majesty, is delegated the right of distributing and conceding all classes of regal lands.

(Signed) CARLOS DEHAULT DELASSUS.

Plat for Pierre Chouteau.

(Here follows map marked page 142.)

Testimony of Gabriel Hoffstetter.

40th. The plaintiff then called as a witness, Gabriel Hoffstetter, who, being duly sworn, testified:

I have been employed in the office of the surveyor general and recorder of land titles for twelve years past. I saw the patent of 1852, to Brazeau. It was never delivered to any one from the recorder's office of land titles. It was sent to Washington in 1858, by order of the Commissioner of the General Land Office.

On cross-examination, witness testified:

Louis G. Pigot came to the office of the recorder of land titles, and demanded the patent in 1855. Adolph Renard was the recorder of land titles. Picot applied for it, and claimed to be entitled to it.

Evidence on the part of defence.

The defendants then read in evidence to the court the following evidence, papers, plats, documents, deeds, &c., testimony, to wit:

Testimony of William Milburn.

"A." The testimony of William Milburn, as follows:

William Milburn, sworn on behalf of defendants, says: I have resided in Missouri since November 5th, eighteen hundred and sixteen.

143 I have known the Labeaume tract in North St. Louis since eighteen hundred and seventeen. I think Major Christy was in

possession in eighteen hundred and seventeen, up to eighteen hundred and forty-one. I was engaged in public surveying and in the surveyor general's office. Have been surveyor general of Missouri and Illinois, from the spring of eighteen hundred and thirty-nine until the summer of eighteen hundred and forty-one. I was dismissed in April eighteen hundred and forty-one, but my successor did not take possession until June. I was chief clerk in the office from eighteen hundred and twenty-two to eighteen hundred and thirty-nine. The first survey of the Labeaume tract was the Spanish one by Soulard. That was before my time. The next was the survey of Mr. Brown, under his contract of eighteen hundred and seventeen, acting as deputy United States surveyor. That survey was returned to the surveyor general's office in eighteen hundred and twenty-two.

The surveys of Mr. Brown were examined by myself under the directions of the surveyor general. In examining private surveys we look to see if they are made in accordance with confirmation. The transcript of the confirmation of the Brazeau and Labeaume tracts, as furnished by the recorder of land titles, was defective, as you will see by examining it. In examining these surveys, when I came to the survey of Mr. Brown, in which he had included two confirmations, I went to the office of the recorder of land titles, and there found that instead of four superficial arpents confirmed to Brazeau, as represented in the transcript and surveyed by Mr. Brown, he had confirmed to him four by four arpents, or sixteen superficial arpents. I then went to the surveyor general and informed him that not only had two confirmations been included in one survey, which was not in accordance with the practice of the office, but that too little quantity had been included for one of said confirmations. Although that survey appears to be approved, it is not. It happened in this way: Mr. Rector was about starting to Washington, and he wished to certify all those surveys of private land claims that were ready, to the recorder; this was in the summer of eighteen hundred and twenty-two; and Rector directed me to write certificates to all the surveys that were ready for him to sign before he left for Washington, that they might be delivered to the recorder of land titles, so that patent certificates might issue upon them to the persons entitled; he had directed, however, that this survey for Labeaume and Brazeau, and several others, were to lie over for correction; the surveys were accordingly collected by myself, and given to the clerk in the office, with a form of certificate for him to write to each. How this survey was put amongst them I can't say; it was not so intended. The certificates were written out by the clerk, and the surveys were then placed in a file for General Rector's signature to the certificate. He, supposing them all right, signed them, one after the other, without looking at them in reference to their corrections. It is evident that such a survey could not be approved, for three reasons: one is, that two confirmations were included in the same survey; another is, that four arpents, which purports to be confirmed to
144 Brazeau, is stated to be surveyed for Louis Labeaume; and the surveyor general always executed the surveys in the name of the person to whom confirmed; the third is, that only four arpents were surveyed for Brazeau, whereas sixteen were confirmed.

Witness is shown a book containing a list of confirmations by the old board, page 12; entries of the Labeaume and Brazeau confirmations, 356 arpents to Labeaume, and 4 arpents to Brazeau; this book was made by the recorder of land titles and sent to the office of the surveyor general in eighteen hundred and sixteen. The boundaries of the Labeaume and Brazeau surveys are not given in said book. The only de-

scription of the Labeaume survey is "356 arpents on the Mississippi," and of the Brazeau, "4 arpents near St. Louis." My recollection is distinct as to the action of General Rector in Brown's survey. He shortly after left for Washington, and so did I. As a matter of precaution, he left the certified surveys with Bartholomew Cozens, to be entered by him in a book, marked on the back "survey's issued," as delivered to the recorder of land titles, and then *he* to be delivered to him. Mr. Cozen did so, but when he came to this survey, No. 982 and 983, he laid it by and did not enter it nor deliver it to the recorder as he did the others; he entered the quantity, situation, and for whom surveyed, but when he came to the column, "to whom deliver'd," "date of delivery," "fees of officer," &c., he left it blank. The entries are "356 arpents, T. 45 N., R. 7 E. Louis Labeaume." And "4 arpents, T. 45 M., R. 7 E. Joseph Brazeau." The entry to whom delivered was not made by Mr. Cozen. When General Rector returned in the spring of eighteen hundred and twenty-three, he approved of what Mr. Cozen had done. The survey remained in the office as long as Mr. Rector was in the office. He went out in eighteen hundred and twenty-four, and General Clark succeeded him. No further action was had on that survey while General Rector was in office. It remained just as it was in the surveyor general's office, until October twenty-fourth, eighteen hundred and thirty-two; Mr. Langham was then surveyor general. A short time previous to that he asked me what was the situation of this survey. I told him what I have stated. I was still chief clerk in the office, and it is here entered in the handwriting of A. H. Evans, who was also clerk in the office. The entry by Evans is, "both surveys in one;" in the column of "to whom delivered," in the name of "E. T. Langhim," and in the column of "date of delivery," is "October 24th, 1832." In the spring of eighteen hundred and thirty-three, I think, the claimants of the Labeaume tract, Mr. Conway, having refused to issue his patent certificate, as I had told Mr. Langham he would do, applied to have their tract surveyed; an order was issued to Mr. Joseph C. Brown to survey for Labeaume 356 arpents, conforming, as nearly as practicable, to the Spanish survey executed by Soulard; I mean by that, if the quantity which Soulard's survey purported for had corresponded with the quantity confirmed, he would have been instructed to run out the lines of Soulard's survey in accordance with decision of Mr. Wirt, Attorney General of the United States, in eighteen hundred and twenty-two or eighteen hundred twenty-three;
145 but as the quantity confirmed was less than the quantity which Soulard's survey purported to contain, he was instructed to throw off the excess on the side which the claimants might direct, and if they gave him no directions, then to throw it off on the side he might deem most for their advantage. Mr. Brown executed the survey in accordance with that instruction, and returned it to the surveyor general's office. It is certified by him, June 8th, eighteen hundred and thirty-three; it was approved and certified by General Dunklin, 14th December, eighteen hundred and thirty-seven. The excess was thrown off on the west; I don't know by whose direction, but suppose that of claimant. "Exhibit No. 28" is a certified copy of that survey. The N. and S. lines were left according to Spanish survey, and the west line was run so as to include the annuity of 356 arpents; that survey is No. 2974; it was directed to the recorder of land titles; that survey, although complete in itself, and connected with the common field out-boundaries, did not show the interference with the individual surveys in the common fields. In eighteen hundred and thirty-eight, Mr. Brown connected the survey No. 1974 with the individual lots of the common fields of

St. Louis as represented in this plat, marked No. 23. I approved of the connection, and embodied them in the description of the survey No. 2974, and issued a certificate of survey to the recorder of land titles. It does not appear from the survey itself where the excess was thrown off. I understood a patent certificate issued on the survey, and it would have been patented, only that a connected plat of the township showing this connected survey had not been filed with the Commissioner of the General Land Office. I executed survey No. 3333. In this survey I have marked the line where the excess was thrown off in survey No. 2974. I surveyed the north and south boundaries, conforming to Labeaume's old ditches; Soulard's Spanish survey purports to run with Labeaume's ditches; and this survey also runs with those ditches. The places of the ditches are hardly visible at present; a person not knowing where they had been would hardly find them on the ground now. As to the line running with the south ditch, I took the place indicated by Mr. Brown in his survey of eighteen hundred and thirty-three, by the bearing and distance to the corner of the ruins of the stone house, built by Martin Thomas, and know that to be exactly, or very near, where the ditch was, from my own knowledge and information, when the ditch was in good repair. Mr. Powell had a tan-yard just above the ditch, and I frequently visited him, and therefore I can't be mistaken about the location of the ditch. The old burying-ground was west of the west ditch, and the road turned off west from the mound, running between the west ditch and the bluff. At the south ditch there was an embankment. In the summer and fall of eighteen hundred and seventeen I lived above North St. Louis. It was always understood that Major Christy was in possession of the Labeaume tract at that time. When I came to St. Louis, eighteen hundred and sixteen, Major Christy was living on the hill near the present north market. In eighteen hundred and seven-
146 teen, I think, he moved into the house which goes by his name, on this tract. There was a house there before, and he made some additions to it. He remained there until his death, in eigtheen hundred and thirty-seven. After his death, his wife and family lived in that house. When I first knew Mr. Christy there, two ditches were good, the bank grown over with grass. The ditches at that time marked the boundaries distinctly. A long time ago I once measured the distance from the mound to the ditch for Mr. Christy; don't recollect what it was; can't tell whether it was more or less than twenty-five years ago. I gave him a certificate of the distance, and I dropped it from my memory. That was the first measurement I ever made there. I knew Pierre Chouteau; he lived on Main street in St. Louis, and had a residence in the country; he lived in this county until he died, a few years back; think I knew Joseph Brazeau, jr., though I have no distinct recollection; can't tell when he died. Knew about William Chambers having some claim to this property, and also Thomas Wright; they claimed it by purchase from Louis Labeaume. The old road leading down to Rocky Branch begins to descend about the north line of Labeaume tract, according to my recollection. I have known the position of the sycamore corner. I established it; and Mr. Brown found the stone in eighteen hundred and seventeen; I didn't find the stone in eighteen hundred and fifty-one, but took the course and distance to the sycamore tree as reported by Mr. Brown. That corner is marked with letter "M" in pencil on the map.

(Witness is shown a paper marked No. 29, purporting to be translation of grant to Louis Labeaume, and also Soulard's survey.)

The Soulard survey begins where the road crosses the creek, and runs from there to sycamore corner, "M;" thence it runs south W. to C.;

thence to "D," and thence to the river, and thence around. The descent of the road begins about where the N. line of Soulard's survey crosses the old road on the map; according to my understanding, I didn't discover the N. ditch when I made this survey, but I know that in former days it ran past the corner marked "M." I found no monument there except the sycamore, which gave the position of the corner; most of the Spanish surveys overrun. Mr. Brown started, I think, 50 links east of the S. E. corner stone of Soulard's survey, and I started at the same place. I ran under the high bank of the river—the Spanish surveys always ran on top of the high bank. There has been an accretion along the whole tract, except on some part of the lower end; I once made a calculation of the accretion; I ran it southwestwardly along the S. ditch as far as the ditch went, and thence the distance called for in Soulard's survey. In running the west line, I ran the course called for, until I intersected the line of the N. ditch produced; I measured the S. line from the place of the brown stone, 80 links E. of the top of the high bank of the river. At the S. W. corner I established a corner, and took for the western boundary the course designated in Soulard's survey; we found no monuments at either the N. W. or S. W. corners.

147 The sycamore at "M," on Heyer's map, was found blazed by Brown; we found no monument at the north end.

Witness is shown plat of Peroux's survey No. 2571. Shown to jury. This survey is bounded on the north by Labeaume's ditch; on the E. by the Mississippi River; on the S. by a line running through blocks 14, 27, and 66, of the city of St. Louis, just south of Prune street, (now Green street,) and on the W. by the E. front line of the St. Louis common fields. The N. line of Chouteau U. S. survey, No. 671, of his confirmation of 93 arpents and one-fourth, by the old board, runs ten chains 98 links south of Labeaume's S. ditch. It interferes with survey No. 3332 just 68 links, and is about 120 links N. of the S. line of E. Brooklyn street. Peyroux's certificate was surveyed by Mr. Brown under his contract, and returned in eighteen hundred and twenty-two. It was, I think, in eighteen hundred and eighteen that Mr. Chouteau entered his protest. It was surveyed before that. Peroux's survey includes the whole of survey No. 3332, but nothing north of the ditch, and all of Chouteau's U. S. survey 671. I know the Cerre survey to the north of Labeaume's, No. 3209. I have seen the Spanish survey of that tract. The S. E. corner of that survey is the corner "M," on Heyer's map. I never surveyed that tract, but found the S.W. corner of it in surveying the Labeaume tract. The S.W. corner I found to be a large old stone, and identified it; it was a very old looking stone; I didn't dig round it.

I found the quantity in survey No. 3333 to be 390 30-100 arpents, including accretions. The quantity of accretion was about 14 acres, or 16 45-100 arpents. If the N. line of Labeaume's survey ran, as claimed by plaintiff, where the road crosses the branch's, there would be about 14 or 15 arpents in the triangle between that and Rocky Branch and the river; if it ran as claimed by defendants, there would be about 40 or 50 arpents. The Cerre confirmation contains some houses, and has been in part, or perhaps all, laid out into blocks. The same is the case with the space between the extensions of the lines forming the N. and S. boundaries of the four by four arpents, as claimed by Jno. Magwire.

MARCH 23D, 1853.

Examination-in-chief of Gen'l W'm Milburn resumed:

I surveyed the Brazeau reservation in December, eighteen hundred

and fifty-one; was first on the Big Mound in eighteen hundred and sixteen; was not acquainted with the ground until eighteen hundred and seventeen. I lived above the city.

Witness handed translation of petition, order of survey, and concession to Joseph Brazeau, and deed from Brazeau to Labeaume, and translation of deed from Brazeau to Choteau; also translation of Labeaume's petition.

148 The descent of a road, if it runs over the top of a hill, is from the top of the hill downwards, in the direction called for, (or spoken of.) If the road runs on the side of a hill, as in this case, its descent is from the point where it inclines downwards to the mentioned terminating point. Then, in speaking at St. Louis of the descent of the road into the branch, the point at which it commenced its inclination downwards, if we continue on the road, we would say, at any intermediate point, that we were on the descent of the road, not at it. When we arrived at the creek or branch, we would not then be at the descent of the road into the branch, but we would be at the ascent of the road *road* out of the branch; that being the case, the north closed line is correctly located. That was Soulard's location. The expression about the word "angle," as used in the grant, is ambiguous; in the English translation before me, it means nothing as applicable to the case. Some translations make it triangle. I should make it quadrangle in connection with this case. I speak from translations, as I do not understand Spanish. The road begins to descend the hill slightly about where the north closed line is marked, but descends more rapidly from where the brow of the hill is marked by shaded line on Heyer's map. North closed line as located is about right, being a little distant from the northwest line of the city. I marked the brow of the hill on Heyer's map by the word "brow," at a line through the letter o in the word road. I mean by the brow of the hill the point where it commences to descend more abruptly, or the edge of the more abrupt descent. * * * * If there would be any variation, it would be a little further south, taking the foot of the mound as it now is; but beginning there, it would not take you to the Rocky Branch by about seven arpents in surveying it; however, we commence at the beginning point and run in the course called for till we get at the distance required, to wit, 20 arpents. * *

The most distinct recollection I have of any persons living north of Labeaume's ditch is of W'm Christy and Chester B. Powell. There were others, but I have not any recollection of them, except Powell and Major Christy; can't say how far Powell lived from the ditch—not far. The land Powell occupied was near the ditch and extended to the river. My impression is that Powell held under Col. William Chambers. It was some time after I came here that I visited Powell; more than ten years after he had a tan-yard there; can't say how long Powell lived there. Was there more than one year, but can't say how many years.

Cross-examination of General Milburn:

Question. Do not the Spanish surveys sometimes overrun the quantity called for when they are actually measured?

Answer. They do *do* overrun in quantity when actually measured; they are never less, I think. I can't say how long Powell was there. Part of the property was inclosed; he had a dwelling-house and tenants; had some kind of fence; what kind can't say; he lived near the ditch; the fence was near the ditch; not far from it; the house was near the river.

149 He had more than 100 feet on the river; think he had at least 150 feet on the river. I mean enclosures, when I speak of possessions.

Major Christy's house was north of the ditch; can't say how far north of the ditch his house was; but I think it was about 8 arpents north of the ditch, and was about two arpents from the river. Christy had extensive enclosures at first; the outside enclosures (the fenches) were with the old ditch; the fences were right along the ditches southwest and north. The ditches were not the enclosures, but marked where Christy's fences were. The fences at first ran along the ditches, but as they fell down they were drawn in towards his house afterwards. There was a fence on the southern ditch to the river from eighteen hundred and seventeen onwards; my impression is clear. Powell's fence, I think, was on the southern ditch; if it was not, there was no other. The orchard, garden, and meadow of Christy were in separate enclosures; can't say that the meadow had any other enclosures than the fences along the ditches. Christy cut hay on his meadow, and pastured it. Outside the fences west and south were scrub-oaks. From the present city waterworks up to the ditch, the land intermediate was overgrown with underbrush in early times. I have seen Labeaume, but had no acquaintance with him. I knew Brown; he was a good surveyor; was a deputy surveyor when I came here; did a good deal of surveying for the United States; died some two or three years ago; was about 60 years old when he died. Believe there was a plat of the township, including the double survey sent on to Washington; but when it was sent can't say; the records of the surveyor's office will give the date. Sometime reference has been had to the concession, to assist the surveyor in making the survey, when the survey was not sufficiently clear and definite. I measured the distance for Christy from the ditch to the foot of the mound, not ten years after I came to this place; I think it was when Rector was surveyor general, and if so, it was before eighteen hundred and twenty-four; it may have been afterwards. I gave Christy a certificate of my measurement; think it was for the purpose of a suit. Most of the old Spanish surveyors call for corner stones; some, however, call for trees; where there was any draw of iron, it was noted in the surveyor's minutes. If the western line of survey No. 3332 projected northwardly in same course, it would not leave four arpents between it and the river on the north end. If the point called for is where the road crosses the creek, I should locate it there, to wit, at the point marked Bnago on Heyer's map. If the call had been "beginning at the foot of the hill beyond the Big Mound," I would look for the foot of the hill beyond the mound, which is about where the ditch is.

Court adjourned till to-morrow at 9 a. m.

MARCH 24, 1853.

Cross-examination of General Milburn resumed:

The southwest corner of survey 3332, marked a stone, is a stone put there by me; there was no stone there when I surveyed it; same as to the southeast and northwest corners. I made the surveys 3332 and 3333 under authority of surveyor general, and he got orders from Commissioner of the Land Office, in accordance with the decision of the Secretary of the Interior. Near the northeast corner Brown found an old stone, which he called the corner of Labeaume survey; it is a little west of my corner, about 150 links.

Reëxamination by defendants:

Defendant offers certified copy of articles of agreement from Chouteau to Strother, dated eighteen hundred and twenty-two.

(Objected to as incompetent and irrelevant. Objection overruled; excepted to. Same read to the jury.)

This paper handed General Milburn, he said: I am familiar with the ground.

Question. State where Carr's north line runs.

Answer. Can't tell where it is; I should think it was this side of East Mound street, but don't know.

Question. Including all the land between the north line of the land sold by Chouteau to Carr and Labeaume's south ditch, and running back so as to embrace the Big Mound, what would the quantity amount to?

(Objected to as incompetent and irrelevant. Objection overruled; excepted to.)

Answer. From Labeaume's ditch to the north line of East Mound street, and east of the east front line of the common field, thence to the river, contains 28 70-100 arpents. Mound street contains about one and 90-100 arpents east of common field line, if 60 feet wide. It ought to be located in quadrangular form. To locate I would have to look elsewhere than to data before me to get Carr's and Labeaume's lines.

Question. From your knowledge of the adjoining tract, can you locate the tract called for?

(Objected to. Objection overruled.)

* * * * * *

Question. Do you know the tract called William Christy's.

(Objected to.)

Answer. I did in eighteen hundred and twenty-two know the south boundary of what is called Christy's tract.

Question. From personal knowledge of locations on the ground of what was called Christy's tract, in eighteen hundred and twenty-two, can you locate the tract on the map?

Answer. Yes. * * *

By the court:

Question. Do you know what tract was understood in eighteen hundred and twenty-two to have been sold by Labeaume to Christy?

Answer. Yes, the ditch is the south line in the location. I do not know from the contract above shown me what tract was sold by Labeaume to William Christy.

The following parts of said testimony of William Milburn were excluded by the court on objection of plaintiff, as follows:

151 Question. Where, from the document just handed you taken with Soulard's survey of Labeaume, and the concession to Cerre and his extension, would you, as a surveyor, locate Labeaume's tract?

Answer. From Labeaume's grant alone, I should locate his tract as in U. S. 3333; and the survey by Soulard conforms to U. S. survey, and fills the terms of the grant; it is the 16 arpents between the ditches represented by the closed lines on Hyer's map. The north closed line fills the calls of the descent of the road into Rocky Branch. * * *

I now take the deed from Brazeau to Labeaume, and from Brazeau to Chouteau.

1st. The deed from Brazeau to Labeaume, according to this deed, I would begin at the foot of the mound, as I understand the words, "at the foot of the hill or mound" are the same thing, and not two different points; that is, the two words, "hill and mound," are two different expressions for *for* the same thing. According to the description in this deed I would locate it about where U. S. survey 3332 would place it. * * * * * * * * * * *

I now take the deed from Brazeau to Chouteau.

According to this deed I would begin at the foot of the mound about where U. S. survey 3332 would place it; if any difference a little south of the survey. I now take the petition, concession, and order of survey to Brazeau, of the 46 by 20 arpents; according to the petition alone I would not know where to begin definitely—could begin anywhere at the foot of the hill—beginning point is on Mississippi River at foot of hill. As a surveyor, from this petition, I would begin on the river anywhere in that neighborhood where the claimant might direct, provided I thought his direction conformed to the petition. It is rather an ambiguous call. There is no certainty in it; petition is not definite where beginning point is. From petition alone could not locate beginning point. The surveyor could put the petitioner in possession of the tract without being particular, so as not to contradict the terms of the petition. I now take the order of survey; to locate that I would first take the north boundary of the land granted to Esther, and bound it on the south by her land, and run northward up the Mississippi River for quantity. I now take the grant; I would ascertain Esther's northern line, and bound it with that the same as with the order of survey just mentioned. I now take exhibit No. 27, a connected plat. I have never examined how to locate the Esther tract, but have looked over the papers; but have never examined on the ground, I mean.

Question. Can you locate it without any reference to any other papers than this contract?

(Objected and objection not sustained.)

Answer. I would locate it along the ditch, to wit, the southern line of Christy, and the northern line mentioned in that agreement. The opposite foot of the small hill on the east side is at a small and distinct elevation, somewhere about one hundred and forty feet west of Second street as projected on Hyer's map.

To the exclusion of said parts of said testimony of William Mil-
152 burn by the court, as hereinbefore set forth, the defendants then and there objected and excepted.

"B."

The agreement of George F. Strother and Pierre Chouteau, 20th December, 1822, as follows:

Agreement between Strother and Chouteau, Dec. 20, 1822.

Articles of agreement had, made, concluded, and agreed upon, this twentieth day of December, eighteen hundred and twenty-two, between Pierre Chouteau of the one part, and George F. Strother of the other part:

1st. The said Pierre Chouteau, in consideration of the sum of five hundred and sixty dollars to him in hand paid by the said George F. Strother, at or before the sealing or delivery of these presents, and the further sum of three thousand nine and fifty dollars to be paid as hereinafter is mentioned, doth*e* hereby, for himself, his heirs, executors, and administrators, and every of them, covenant, promise, and agree to and with the said George F. Strother, his heirs, executors, and administrators, and all and every of them, by these presents, that the said Pierre Chouteau, his heirs and assigns, and all and every other person or persons whomsoever, claiming or to claim any right, title, or interest under him or any

person or persons whatsoever, of, in, or to, two several tracts or parcels of land hereinafter mentioned, shall and will, at the proper costs of him, the said Pierre Chouteau, his heirs and assigns, on or before the first day of March next, by such conveyances, assurances, ways and means in the law, as he, the said George F. Strother, his heirs and assigns, shall reasonably desire and require, well and sufficiently, grant, sell, release, convey and assure, to the said George F. Strother, his heirs and assigns, a tract (torn off) four arpents in front and forty arpents deep, lying upon the side (torn off) the road opposite Duchonquet's farm, and embracing the big spring, containing one hundred and sixty arpents; and a tract or parcel of land, lying upon the Mississippi, extending upon the bank of the river from the tract of land sold by the said Pierre Chouteau to William C. Carr, to a tract of land formerly sold by Labeaume to William Christy, according to conveyance from Brazeau to Labeaume, and running with each of the lines back, as to embrace the Big Mound, the said tract of land to contain at least thirty arpents, with covenants to be therein contained; that the said two tracts of land, at the time of conveyance, is free from all incumbrances and demands whatsoever, and all other and reasonable convenants. In consideration whereof, the said George F. Strother doth hereby covenant, promise, and agree to and with said Pierre Chouteau, his heirs and assigns, that at the time of executing the conveyance, he conveys to him a house and lot in the town of St. Louis, purchased from Hughes and Morris, adm'r, about at the price of six hundred and fifty dollars; two thousand two hundred dollars in promissory notes or bonds due from persons residing in the State of Missouri, to be assigned by the said Strother; three hundred and
153 fifty dollars in cash, when *when* the deeds are executed, and seven hundred and forty dollars sixteen months after the execution of the said deed.

In witness whereof the parties have hereunto subscribed their hands and affixed their seals the day and year first above recited.

[Place for seals torn off.]

PIERRE CHOUTEAU.
GEO. F. STROTHER.

Witness—
H. COZENS.

"C."

Testimony L. G. Picot.

Defendants called as a witness Louis G. Picot, who, being duly sworn, testified as follows:

Question. Did you ever make a demand for the patent issued to Joseph Brazeau and his legal representatives, for four by four arpents in 1852, as a legal representative of said Brazeau?

Answer. Yes, I made divers demands of A. Renard, recorder of land titles, and I also demanded it of one or more Commissioners of the General Land Office, and the Secretary of the Interior in person, and by attorney.

Question. By what right did you demand that patent?

Answer. In a twofold right, as an owner and as attorney for others owning the property in the said patent.

Question. Was the Brazeau patent of 1852 ever used before the circuit court of the United States?

Answer. I tried the case of Biddle vs. Patterson in eighteen hundred

and fifty-four; I went to trial, believing the recorder of land titles would produce the patent under a subpœna. I don't remember a subpœna ducas tecum. The patent was produced by the recorder of land titles. The introduction of the patent was resisted by B. A. Hill and others, but the court admitted the Brazeau patent of 1852 to be read in evidence. My memory is fortified by my notes of evidence in that case. The Brazeau patent of 1852 was also read in evidence in the case of Picot vs. Page, Bogy and Benoist, in the St. Louis court of common pleas in a suit in that court.

Question. When did you make the first demand for that patent?

Answer. Some time previous to a written application in 1852, I made an oral application to the recorder of land titles for that patent. My oral application was followed up by a written one. This copy of that application shown me is a true copy, and is as follows:

ST. LOUIS, *July* 31, 1855.

A. RENARD, esq'r, U. S. recorder of land titles in the State of Missouri:

SIR: The undersigned claims in his own right and as attorney for John Biddle, and for some of the representatives of John Mullanphy, to be entitled to the patent issued for the four by four arpents of
154 land confirmed to Brazeau, and requests its delivery. Assuming that any evidence to show that Brazeau sold the land to Chouteau would be superfluous, I refer you to the following documents for the proof that I am entitled to demand and receive the document in question: 1. The deed of Chouteau to Strother, dated June 1, 1826, recorded in St. Louis recorder's office, in Book N, p. 77. In this deed Chouteau conveys the land in question, under the following description: "One other tract of land containing four arpents, running on the river, and running back west four arpents, making sixteen arpents, lying between the north line of the first described tract of land, and the south boundary of the tract of land sold by Joseph Brazeau to Labeaume; the said sixteen arpents of land being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by said Joseph to Pierre Chouteau." 2d. The deed of said Strother to John O'Fallon and John Mullanphy, in trust for the Marine Railway Company, dated Sept. 3d, 1830, and recorded at said office, in Book Q, 217, whereby the said parcel of land is conveyed. 3d. The deeds of O'Fallon, surv'ying trustee to Mrs. Ann Biddle, and to the representatives of John Mullanphy for portions of the land. These deeds are dated Nov. 5, 1841, and recorded at said office, in Book G, 4, page 17, and T. 5, page 380. 4th. The will of Ann Biddle. The copies and originals of said instruments, herewith exhibited, are not intended to be filed or permanently left with you, as I presume that an inspection of the same will be sufficient for the purposes of this application. Please, therefore, treat them as my private property.

Your ob't serv't,

L. G. PICOT.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Feb. 3, 1863.

The foregoing letter from Picot to Recorder Renard is correctly copied from the original on file in this office.

THOMAS S. NELSON,
U. S. Recorder of Land Titles in the State of Missouri.

On cross-examination witness testified:

The patent was not delivered to me by the recorder. Sometimes he was disposed to deliver, but concluded to refuse. Secretary Thompson promised to send the patent to me, but did not. The patent was brought in to be used as evidence, and went back in the custody of A. Renard, the recorder of land titles.

On re-examination witness testified:

Question. Did you ever see the said Brazeau patent of 1852 in the recorder's office?

Answer. I did not; but I saw the patent in court.

155 "D."

The United States survey No. 3332, for Joseph Brazeau, made in 1852 as follows:

(Here follows map marked page 155.)

U. S. Survey 3332 for Brazeau.

Beginning at a stake on the right bank of the Mississippi River, the lower and most eastern corner of a tract of 374 arpents surveyed on the 2d March, 1799, by Ant. Soulard, Spanish surveyor general of Upper Louisiana, for Louis Labeaume, in virtue of an order from the lieutenant governor, Zenon Trudeau, dated the 15th of February, 1799, and now No. 3333 of the United States surveys of private land claims in Missouri; said lower corner of the Labeaume tract being the upper and most northern corner of this survey of Joseph Brazeau, and from it, the remains of a stone house bears S. 57 deg. 55 min. W., distant 129 links; thence S. 23 deg. E., along the right bank of the Mississippi River, the easterly boundary of this survey, at 11 chains, 66⅔ links, equal to four arpents, a stake set in the rear of the workshop attached to Patterson's saw-mill, the lower and most eastern corner of this survey; thence 74 deg. 30 min. W., with the southern boundary of this survey, it being 68 links southward of the northern boundary line of a tract surveyed for Peter Chouteau, and numbered 671; at 1 chain 79½ links intersecting the west front of the aforesaid workshop, and 10 links northward of the southwest corner thereof; at 11 chains 76⅔ links, a limestone 15 inches long, set in the ground so deep, 8 inches wide and 6 inches thick, the most southerly corner of this survey; from the stone at the southwest corner of Second street and East Brooklyn street, of the city of St. Louis, bears S. 28 deg. 30 min. E., distant 55 links, and the stone at the northeast corner of the said street, bears N. 57 deg. 15 min. E., distant 111 links; thence N. 23 deg. W. with the westerly boundary of this survey at 68 links, intersecting the northern boundary of Peter Chouteau's survey, No. 671, 3 chains 28 links eastwardly from the northward corner of said survey, at 9 chains 58⅔ links, intersecting the east boundary of the St. Louis common fields, and of the field lot confirmed to Gabriel Dodier's representatives, survey No. 3410, at a limestone 21 links north of the southeast corner of the said lot of Dodier, at 11 chains 66⅔ links, equal to four arpents, a limestone 12 inches long, at Louis Labeaume's southern ditch, being on the southern boundary of this tract, survey No. 3333; thence N. 74 deg. 30 min. E., with the old ditch, Labeaume's southern boundary, and the northern boundary of this survey at 76⅔ links, intersecting the eastern boundary of the St. Louis common fields and of Dodier's lot, at an old stone 2 chains 12½ links northwardly from

the last mentioned intersection on said common field line, and 2 chains 33⅓ links from the southeast corner of said Dodier lot, at 11 chains 76⅔ links to the beginning corner.

156 "E"

The United States patent to Joseph Brazeau of 1852, as follows:

Patent to Jos. Brazeau, 1852.

Whereas there has been deposited in the General Land Office a patent certificate, numbered 1250, of the recorder of land titles at St. Louis, Missouri, whereby it appears that on the 22d day of September, 1810, the board of commissioner appointed in pursuance of the fifth section of the act of Congress approved the 2d day of March, 1805, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans, and district of Louisiana," confirmed to Joseph Brazeau four arpents of land, situate about three miles north of the town of St. Louis; and that on the 14th day of June, 1811, they issued their certificate No. 983, for the confirmation, as per the fourth section of the act of Congress of the 3d of March, 1807, entitled "An act respecting claims to land in the Territory of Orleans, and district of Louisiana," and that from a careful examination of the records it is the opinion of the recorder's office that the four arpents of this confirmation were intended to mean four arpents in front along the Mississippi River, by four arpents in depth toward the west, or sixteen superficial arpents. And whereas it further appears, from the aforesaid patent certificate, that the said land has been surveyed in strict conformity with the decision of the 25th July, 1851, of the Secretary of the Interior, as appears from the plat and transcript of survey No. 3332, which accompanied said patent certificate, the said plat and transcript having been authenticated by M. Lewis Clark, surveyor general of Illinois and Missouri, under date of the 26th of February, 1852; which survey, No. 3332, contains 13 61–100 acres, equal to 16 arpents of land, being situate in township 45 north of the base line of range 7 east of the 5th principal meridian, in the State of Missouri, which is platted and described as follows, to wit: Beginning at a stake set on the right bank of the Mississippi River, the lower and most eastern corner of a tract of 374 arpents, surveyed on the 2d day of March, 1799, by Antoine Soulard, Spanish surveyor general of Upper Louisiana, for Louis Labeaume, in virtue of an order from the lieutenant governor, Zenon Trudeau, dated the 15th day of February, 1799, and now No. 3333, of the United States surveys of private confirmed claims in Missouri; said lower corner of the Labeaume tract being the upper and most northern corner of this survey of Joseph Brazeau; and from it the remains of a stone house bears S. 57 deg. 55 min. W., distant 129 links; thence S. 23 deg. E. along the right bank of the Mississippi River, the easterly boundary of this survey, at 11 chains 66⅔ links, equal to four arpents, a stake set in rear of the workshop attached to Patterson's saw mill, the lower and most eastern corner of this survey; thence 74 deg. 30 min. W., with the southern boundary of this survey, it being 68 links southward of the northern boundary line of a tract surveyed for Peter Chouteau, and numbered 671, at 1 chain
157 79½ links, intersecting the west front of the aforesaid workshop, and 10 links northward of the southwest corner thereof; at 11 chains 76⅔ links, a limestone, 15 inches long, set into the ground so deep, 8 inches wide and 6 inches thick, the most southerly corner of this sur-

vey; from which the stone at the southwest corner of Second street and East Brooklyn street, of the city of St. Louis, bears S. 28 deg. 30 min. E., distant 55 links, and the stone at the northeast corner of said street bears N. 57 deg. 15 min. E., distant 111 links; thence N. 23 deg. W., with the westerly boundary of this survey, at 68 links, intersecting the northern boundary of Peter Chouteau's survey, No. 671, 3 chains 28 links eastwardly from the northward corner of said survey; at 9 chains 58⅔ links, intersecting the eastern boundary of the St. Louis common fields, and of the field lot confirmed to Gabriel Dodier's representatives, survey No. 3410; at a limestone 21 links northward of the southeast corner of said lot of Dodier, at 11 chains 66⅔ links, equal to four arpents, a limestone, 12 inches long, at Louis Labeaume's southern ditch, being on the southern boundary of this tract, survey No. 3333; thence N. 74 deg. 30 min. E., with the old ditch, Labeaume's southern boundary, and the northern boundary of this survey at 76⅔ links, intersecting the eastern boundary of the St. Louis common fields, and of Dodier's lot, at an old stone, 2 chains 12⅓ links northwardly from the last mentioned intersection, or said common field line, and 2 chains 33⅓ links from the southeast corner of said Dodier lot, at 11 chains 76⅔ links to the beginning corner. The foregoing description of the metes and bounds of said survey No. 3332 being accompanied in the said transcript of survey, certified on the 26th day of February, 1852, by Surveyor General Clark, by the following statement of surveys of private claims, which interfere with No. 3332, by Joseph Brazeau, before described, to wit: Survey No. 671, of Peter Chouteau, founded on a concession of the 16th of October, 1799, by Lieutenant Governor C. D. Delassus, to Pierre Chouteau. The grant was surveyed on the 10th of March, 1803, by Antoine Soulard, as certified by him on the 17th of June, of the same year, to the amount of 133 arpents, but said Chouteau, on the 25th of January, 1809, renounced before the old board of commissioners all claim to 39 arpents and 99 perches of the land claimed, which interfered with land heretofore surveyed, leaving the quantity at present claimed 93 arpents and 1 perch. In consequence thereof, the said board confirmed to Pierre Chouteau 93 arpents and 1 perch, on the 29th of May, 1811, as per certificate No. 671, under the 4th section of the act of the 3d of March, 1807; and they ordered that the same be surveyed so as not to interfere with the field lots of the Little Prairie, adjoining the town of St. Louis.

This confirmation was surveyed by the United States as No. 671. It was duly recorded, and a transcript survey was returned to the recorder of land titles on the 4th of November, 1822. That officer issued patent certificate No. 289 for said survey; No. 671, on the 28th November, 1823, which was succeeded by a patent on the 26th March, 1824.

158 See Book C, page 377, 378, and 379; also minutes of the board of commissioners, Book No. 3, pages 443 and 445, No. 5, page 159; and confirmation certificate No. 671, in the recorder's office. And see Record Book B, page 221, register of private surveys in Missouri, page 19.

The letters of the Commissioners of the General Land Office of July 19, 1841; 11th March, and 15th of December, 1847, to the surveyor general, and the surveyor general's letters to the said Commissioner of the 10th June, 1847, and 8th November, 1847, all in the surveyor general's office; also American State Papers, vol. 2, page 585, edition of 1834.

2d. Survey No. 1419.—Jacque Clamorgan, assignee of Ortez, under Gabriel Dodier, a concession of two by forty arpents, bounded south by Kerichereau, and north by Debruisseau, to Gabriel Dodier; and survey of the same certified on the 23d May, 1772, by Pedro Piernas, lieutenant

governor of the Spanish settlement of Illinois, and Martin Duralde, a surveyor duly appointed by said Piernas; sale by Margaret, widow of Gabriel Dodier, to John B. Ortez, the 10th January, 1810; sale by Ortez and wife to Jacque Clamorgan the 14th April, 1810. Confirmation to Gabriel Dodier's representatives, by the act of the 13 June, 1812, as per proof before Recorder Hunt, on the 13 August, 1825, pursuant to the first section of the act 13 May, 1824, surveyed by the United States in October, 1826, as No. 1410, but no transcript survey as yet returned to the recorder, for a certificate of confirmation. (See Livre Terrien, No. pages 35, 36, 67, and 68; Book F, pages 90 and 91; Bates' minutes, pages 74 and 128, and his decision, page 1, and Hunt's minutes, Book No. 2, page 147, in the recorder's office; see book of field notes, of private surveys in Missouri, No. 18, and Hunt's list, No. 666, in the office of the surveyor general; also American State Papers, vol. 2, page 276, edition of 1834.)

3d. The Brazeau survey interferes also with No. 2571, dated March, 1822, of a location of 160 acres, made on the 7th April, 1817, by Thomas Rector and Elias Barcroft, for Henry Peroux, under Frances Hamelin, to whom had been issued on the 30th November, 1815, certificate No. 184, for the said 160 acres, under the act of Congress of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquake." It appears that survey No. 2571 was returned to the recorder on the 24th January, 1824, and then patent certificate No. 408 was issued on the 27th April, 1833, and transmitted to the General Land Office; but the Commissioner having decided in his letter of the 15th January, 1839, to the surveyor general, that this tract not being land the sale of which was authorized by law, Peroux's claim to it must be regarded invalid. No notice is therefore taken of survey No. 2571. (See register of New Madrid sections, in the recorder's office, Book A, page 105; register of private surveys in Missouri, page 70, and the aforesaid letters of the 15th January, 1839, in this office.) Now know ye, that there is therefore granted by the United States unto the said Joseph
159 Brazeau, or his legal representatives, and to his and their heirs, the tract of land as described in the aforesaid survey No. 3332, saving and reserving any valid adverse rights which may exist to any part thereof.

To have and to hold the said tract of land according to the said survey No. 3332, unto the said Joseph Brazeau, or his legal representatives, and to his or their heirs and assigns forever, with the saving and reserving aforesaid.

In testimony whereof I, Millard Fillmore, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, this 25th day of March, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the seventy-sixth.

By the President:

MILLARD FILLMORE.

By M. P. FILLMORE, *Secretary.*

Recorded vol., page 172, 173, 174, 175, 176, 177, 178.

JAS. S. WILSON,

Acting Recorder of the General Land Office, at interim.

"F."

The act of the general assembly of the State of Missouri of December 16th, 1830.

2d territorial laws, page 204 and 205; the act of the general assembly of the of Missouri of the 25th January, 1837; page 2909, session acts of 1836–7; the act of the general assembly of the State of Missouri for the division of the property of the Marine Railway Company, contained in session acts of 1841, page 187 and following. And it is agreed by all the parties that said acts of the general assembly of the State of Missouri may be read in all courts on appeal or writ of error in this cause, from the printed volumes containing the said laws, without objection by either party.

"G."

Deed of Marine Railway Company to Ann Biddle.

Deed of Marine Railway Company and John O'Fallon to Ann Biddle, dated November or December 5, 1846, and recorded in Book G, 4, p. 17, as follows:

Whereas, by an act of the general assembly of the State of Missouri, approved the fifteenth day of February, eighteen hundred and forty-one, entitled "An act to repeal the charter of the St. Louis Marine Railway Company, the owners of the stock in said company, or their executors or administrators, were authorized to hold meetings for the purpose of making some disposition of the property and effects of said company, and to provide for the sale, gift, partition, or other disposition of
160 the same, and to convey the same, or any part thereof, by deed executed by said company, with the direction of said stockholders; and whereas, at a meeting held by the said stockholders in pursuance of said act, on the 4th day of November, in the year eighteen hundred and forty-one, it was resolved that a deed should be made to Ann Biddle, one of the stockholders, for said Ann Biddle's share of the land of said company, consisting of the following lots or parcels of ground in the said Marine Railway tract, as hereinafter described: Now, therefore, this deed, made this fifth day of November, in the year of our Lord one thousand eight hundred and forty-one, between the St. Louis Marine Railway Company, party of the first part, and John O'Fallon, party of the second part, and Ann Biddle, party of the third part, witnesseth: That the said party of first part, for and in consideration of the premises, and one dollar to said party of the first part paid by the said Ann Biddle, doth hereby grant, sell, alien, enfeoff, and confirm unto her, the said Ann Biddle, all the following described lots of ground in the Marine Railway tract of land, so called, which lie northwardly of Brooklyn street, a sixty-foot street, running eastwardly and westwardly through said tract, according to a plat of said tract, which said portion of said tract hereby conveyed is represented on the annexed plat, which is a part of this deed and are described as follows, to wit: Lot number eleven, in block number two, bounded north by lot of the estate of Mullanphy, number twelve; east by the Mississippi River; south by lot of the estate of Mullanphy, number ten; and west by a twenty-foot alley; said lot fronts eighty-two feet on the river, by one *one* hundred and forty-three feet deep on the north line to the alley; also lot number four in said block number two, bounded north by Peter Lindell's lot, number three; east by a twenty-foot alley; south by lot of the estate

of Mullanphy, number five; and west by Main and First street; said lot fronts seventy-nine feet on the east side of Main street, by one hundred feet deep. Also lot number seven, in block number three, bounded north by lot of the estate of Mullanphy; east by Main or First street; south by Brooklyn street; and west by a twenty-foot alley; said lot fronts sixty-nine feet on Main street, by one hundred and fifty feet deep on Brooklyn street. Also lot number three, in said block number three, bounded north by Peter Lindell's lot, number three; east by a twenty-foot alley; south by lot of the estate of Mullanphy, number four; and west by Second street; said lot fronts seventy-seven feet on Second street by one hundred and fifty feet inches deep to the alley. Also lot number twelve, in block number six, bounded north by space not divided, thirty feet wide along the lines, streets, and alleys; east by Second street; south by lot number eleven, Daniel D. Page's lot; and west by a twenty-foot alley; said lot fronts seventy-five feet and five inches on the west side of Second street by one hundred feet deep. Also lot number three, in said block number six, bounded north by lot of the estate of Mullanphy, number two; east by a twenty-foot alley; south by Daniel D. Page's lot, number four; and west by the boundary line of the common field lots; said lot fronts ninety-two feet five
161 inches on the west line, by seventy-two feet nine inches deep on the north line. Said Marine Railway tract lies in St. Louis; and the said party of the second part, for the consideration aforesaid, and of one dollar to him in hand paid by said Biddle, doth hereby assign, convey, release, and quit-claim unto the said Ann Biddle, all his right, title, and interest in the said pieces of ground above described and conveyed, and particularly all his right and estate acquired by deed of George F. Strother and wife, and by deed of the Solicitor of the Treasury of the United States to John Mullanphy and John O'Fallon, trustees for said Marine Railway Company, in the said tracts of land above conveyed. To have and to hold the said above conveyed and described pieces of land, with all the rights, privileges, and appurtenances thereto belonging, unto her, the said Ann Biddle, her heirs and assigns forever. And it is the understanding and agreement of the parties hereto, that the streets and alleys, as laid down on the piece of land herein conveyed, shall forever remain as public streets and ways, to be used as such by the public forever.

In testimony whereof John O'Fallon, expressly authorized so to do, has hereto subscribed his name on behalf of said party of the first part, and has affixed the seal of the said Marine Railway Company, and also the parties of the second and third part have hereto set their hands and seals, the day and year in that behalf above written.

[L. S.] JOHN O'FALLON,
In behalf of the Marine Railway Company.
[SEAL.] J. O'FALLON.
[SEAL.] ANN BIDDLE.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this ninth day of December, in the year of our Lord one thousand eight hundred and forty-one, before me, Louis T. Labeaume, a justice of the peace, within and for the county aforesaid, came John O'Fallon, for himself, as well as on behalf of the Marine Railway Company, who is personally known to me; and also on this fifteenth day of March, eighteen hundred and forty-two, came Ann Biddle, who is personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as parties

thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

Given under my hand this fifteenth day of March, eighteen hundred and forty-two.

LOUIS T. LABEAUME,
Justice of the Peace, St. Louis County.

Filed and recorded December 5th, 1846.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

The undersigned, recorder for said county, certifies that the foregoing is a true copy of a deed from Marine Railway Company and
162 John O'Fallon to Ann Biddle, the certificate of acknowledgement and the date of filing and recording, as the same remains of record in my office, in Book G, 4, p. 17.

Witness my hand and official seal this 19th day of September, 1865.

A. C. BERNOUDY, *Recorder,*
[L. S.] Per I. CONRAD, *Deputy.*

(Here follows map marked page 162.)

"H."

Deed of Marine Railway Company to Peter Lindell.

Deed from Marine Railway Company and John O'Fallon to Peter Lindell, on the fifth day of November, 1841, and recorded in Book D, 3, 81, which is as follows:

Whereas by an act of the general assembly of the State of Missouri approved the fifteenth day of February, eighteen hundred and forty-one, entitled "An act to repeal the charter of the St. Louis Marine Railway Company," the owners of the stock in said company, or their executors or administrators, were authorised to hold meetings for the purpose of making some disposition of the same, and to convey the same, or any part thereof, by deed executed in the name of said company, in conformity with the directions of said stockholders: In pursuance of said act, on the fourth day of November, in the year eighteen hundred and forty-one, it was resolved that a deed should be made to Peter Lindell, one of the stockholders for said Lindell's share of the land of said company, consisting of the following lots or parcels of ground in the marine railway tract, as hereinafter described. Now, therefore, this deed, made this fifth day of November, in the year of Lord one thousand eight hundred and forty-one, between the St. Louis Marine Railway Company, party of the first part, and John O'Fallon, party of the second part, and Peter Lindell, party of the third part, witnesseth: That the said party of the first part, for and in consideration of the premises, and of one dollar to said party of the first part paid by said Lindell, doth hereby grant, sell, alien, enfeoff and confirm unto him, the said Lindell, all the following-described lots of ground in the Marine Railway tract of land, so called, which lie northwardly of Brooklyn street, a sixty-foot street, running eastwardly and westwardly through said tract, according to a plat of said tract, which said portion of said tract, hereby conveyed, is represented on the annexed plat, which is a part of this deed, and are bounded and described as follows, to wit: Lot number (7,) in block number two, (2,) bounded east by the Mississippi River, south by Brooklyn street, west by a twenty-foot alley, north by lot number

eight, (8,) in said block allotted to Daniel D. Page; said lots front sixty-six feet on the river, by one hundred and forty-nine feet deep on Brooklyn street, to the alley. Also lot number three, (3,) in said block No. two, bounded north by lot number two, in said block allotted
163 to the estate of John Mullanphy, east by a twenty-foot alley, south by lot number four, allotted to Mrs. Ann Biddle, and west by Main or First street; said lot fronts seventy-nine feet on Main or First street, by one hundred feet deep. Also lot number eleven, in block number three, bounded north by lot of D. D. Page, east by Maine or First street, south by lot of Mrs. Ann C. Farrar, number ten in said block, and west by a twenty-foot alley; said lot fronts seventy-eight feet on Main street, by one hundred and fifty feet ten inches deep, to the alley. Also lot number two, in said block number three, bounded north by D. D. Page's lot, number one, east by a twenty-foot alley, south by Mrs. Ann Biddle's lot number three, and west by Second street; said lot fronts seventy-seven feet on Second street, by one hundred and fifty feet ten inches deep. Also lot number eight in block number six, bounded north by Mrs. Ann C. Farrar's lot number nine, east by Second street, south by lot number seven, allotted to the estate of Mullanphy, and west by a twenty-foot alley; said lot fronts seventy six feet on Second street, by one hundred feet deep. Also lot number five, in said block number six, bounded north by D. D. Page's lot number four, east by a twenty-foot alley, south by lot of the estate of Mullanphy, number six, and west by boundary line of the common field lots; said lot fronts sixty-three feet eight inches on the boundary line of the common field lots, by one hundred and twenty-three feet deep. Said Marine Railway tract lies in St. Louis County, just north of the town of St. Louis. And the said party of the second part, for the consideration aforesaid, and of one dollar to him paid by said Lindell, doth hereby assign, transfer, convey, and release and quit-claim unto the said Lindell, all his right, title, and interest in the said pieces of ground above described and conveyed, and particularly all his right and estate acquired by George F. Strother and wife, and by deed of the Solicitor of the Treasury of the United States, to John Mullanphy and John O'Fallon, trustees for said Marine Railway Company, in the said tracts of land above herein conveyed. To have and to hold the said above conveyed and described pieces of land, with all the rights, privileges, and appurtenances thereto belonging, unto him, the said Lindell, his heirs and assigns forever. And it is the understanding and agreement of the parties hereto, that the streets and alleys, as laid down on the piece of land herein conveyed, shall forever remain as public streets and ways, to be used as such by the public forever.

In testimony whereof John O'Fallon, expressly authorized so to, hath hereunto subscribed his name on behalf of said party of the first part, and hath affixed the seal of said Marine Railway Company, and also the parties of the second and third part have hereunto set their hands and seals, the day and year in that behalf above written.

[SEAL.] JOHN O'FALLON,
In behalf of the Marine Railway Company.
[SEAL.] J. O'FALLON.
[SEAL.] PETER LINDELL.

164 STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this ninth day of November, eighteen hundred and forty-one, before me, Louis L. Labeaume, a justice of the peace, within and for the county aforesaid, came John O'Fallon, for

himself, as well as on behalf of the Marine Railway Company, and on the eighth day of January, eighteen hundred and forty-two, came Peter Lindell, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

Given under my hand this 8th day of January, 1842.

LOUIS T. LABEAUME, *Justice.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder of said county, certify the foregoing is a true copy of a deed from the Marine Railway Company to P. Lindell, the certificate of acknowledgment, and of the date of filing and recording, as the same remains of record in my office in book O, 3, page 81.

Witness my hand and official seal this 19th day of Sept., 1865.

A. C. BERNOUDY, *Recorder,*
Per I. CONRAD, *D'y.*

"I."

The map above referred to is same one which faces page 299.

Deed of Marine Railway Company and John O'Fallon to John Mullanphy's representatives, as follows:

Deed of Marine R. Company to Mullanphy's Rep's.

Whereas, by an act of the general assembly of the State of Missouri, approved the fifteenth day of February, eighteen hundred and forty-one, entitled "An act to repeal the charter of the St. Louis Marine Railway Company," the owners of the stock in said company, or their executors or administrators, were authorized to hold meetings for the purpose of making some disposition of the property and effects of said company, and to provide for the sale, gift, partition, or other disposition of the same; and to convey the same or any part thereof, by deed executed in the name of said company, in conformity with the directions of said stockholders. And whereas, at a meeting held by the stockholders, in pursuance of said act, on the fourteenth day of November, in the year eighteen hundred and forty-one, it was resolved that a deed should be made to the legal representatives of John Mullanphy, deceased, which said John Mullanphy was, in his lifetime, one of said stockholders, for such share of the lands of said company as the said legal representatives of John Mullanphy were entitled to, consisting of the following lots or parcels of ground in the said Marine Railway tract, as hereinafter described:

Now, therefore, this deed, made the fifth day of November, in the
165 year of our Lord one thousand eight hundred and forty-one, between the said St. Louis Marine Railway Company, party of the first part, and John O'Fallon, party of the second part, and the legal representatives of John Mullanphy, deceased, parties of the third part, witnesseth: That the said party of the first part, for and in consideration of the premises, and of one dollar to said party of the first part paid by said legal representatives of John Mullanphy, doth hereby grant, sell, alien, enfeoff, and confirm unto the said legal representatives of John Mullanphy, deceased, all the following described lots of grounds in the Marine Railway tract of land, so called, which lie northwardly of Brooklyn street, a sixty-foot street, running eastwardly and westwardly through said tract, which said portion of said tract is hereby conveyed,

is represented on annexed plat, which is a part of the deed, and are bounded and described as follows, to wit: Lot number two, in block number two, bounded north by lot of Daniel D. Page numbered one, east by a twenty-foot alley, south by lot of Peter Lindell numbered three, and west by Main or First street; said lot fronts eighty feet on Main street, by one hundred feet in depth, to the alley. Also lot number five, in said block number two, bounded north by lot of Mrs. Ann Biddle numbered four, east by an alley twenty feet wide, south by lot of Mrs. Farrar numbered six, and west by Main or First street; said lot fronts thirty-nine feet six inches on Main street, by one hundred feet in depth, to the alley. Also lot number ten, in said block number two, bounded north by lot of Mrs. Ann Biddle numbered eleven, east by the Mississippi River, south by lot of Mrs. Farrar numbered nine, and west by an alley twenty feet wide; said lot fronts thirty-nine feet six inches on the Mississippi River, and extend' to said alley. Also lot number twelve, in block number two, bounded north by space not divided along the lines, streets, and alleys, east by the Mississippi River, south by lot of Anne Biddle numbered eleven, and west by an alley twenty feet wide; said lot fronts ninety feet on the Mississippi River, and eighty-six feet nine inches on said alley. Also lot number four, in block number three, bounded north by lot of Ann Biddle numbered three, east by an alley twenty feet wide, south by lot of Mrs. Farrar numbered five, and west by Second street; said lot fronts seventy-seven feet on Second street, by one hundred and fifty feet in depth, more or less, to said alley. Also lot number six, in block number three, bounded north by lot of Mrs. Farrar number five, east by an alley twenty feet wide, south by Brooklyn street, and west by Second street; said lot fronts twenty-nine feet and a half on Second street, by one hundred and fifty feet in depth, more or less, to said alley. Also lot number eight, in block three, bounded north by lot of said Mullanphy's representatives, east by Main street, south by lot of Mrs. Ann Biddle numbered seven, and west by an alley twenty feet wide; said lot fronts seventy-eight feet on Main street, by one hundred and fifty feet in depth, more or less, to an alley. Also lot number nine, in block number three, bounded north by lot of Mrs. Farrar numbered ten, east by Main street, south by lot number eight, last described, and west by an alley twenty feet wide; said 166 lot fronts thirty-nine feet on Main street, by one hundred and fifty feet in depth, to said alley. Also lot number two, in block number , bounded north by lot of Mrs. Farrar numbered one, east by an alley twenty feet wide, south by lot of Mrs. Ann Biddle numbered three, and west by line of common field lots; said lot fronts fifty feet on said alley, and fifty-one feet four inches on line of common field lots, by sixty-one feet eight inches on the north line, and seventy-two feet nine inches in depth on the south line. Also lot number six, in block number six, bounded north by lot of Peter Lindell numbered five, east by an alley twenty feet wide, south by said Brooklyn street, and west by line of common field lots; said lot fronts thirty-seven and a half feet on said alley, and thirty-eight feet and a half on line of common field lots, by one hundred and twenty-three feet on the north line, and one hundred and thirty-one and a half feet in depth on the south line. Also lot number seven, in block number six, bounded north by lot of Peter Lindell numbered eight, east by Second street, south by Brooklyn street, and west by an alley twenty feet wide; said lot fronts sixty-seven feet on Second street, by one hundred feet in depth, to said alley. Also lot number ten, in block number six, bounded north by lot of Daniel D. Page numbered eleven, east by Second street, south by lot of Mrs. Far-

rar numbered nine, and west by an alley twenty feet wide; said lot fronts thirty-eight feet on Second street, by one hundred feet in depth, to said alley; said Marine Railway tract lies in St. Louis County, just north of the town of St. Louis. And the said party of the second part, for the consideration aforesaid, and for one dollar to him in hand paid by said legal representatives of said John Mullanphy, doth hereby assign, transfer, convey, release, and quit-claim unto the said legal representatives of John Mullanphy, deceased, all his right, title, and interest in said pieces of ground above described and conveyed, and particularly all his right and estate acquired by deed of George F. Strother and wife, and by deed of the Solicitor of the Treasury of the United States to John Mullanphy and John O'Fallon, trustees of said Marine Railway Company, in the said tracts of land above herein conveyed. To have and to hold the said above conveyed and described pieces of land, with all rights, privileges, and appu'tenances thereto belonging, unto him, the said legal *the said legal* representatives of John Mullanphy, deceased, their heirs and assigns, forever. And it is the understanding and agreement of the parties hereto, that the streets and alleys, as laid down on the piece of land herein conveyed, shall forever remain as public streets and ways, to be used as such by the public forever.

In testimony whereof, John O'Fallon, expressly authorized so to do, hath hereto subscribed his name, on behalf of said party of the first part, and hath affixed the seal of said St. Louis Marine Railway Company; and also the parties of the second and third part have hereunto set their hands and seals, the day and year in that behalf above written.

[SEAL.] JOHN O'FALLON,
In behalf of the St. Louis Marine Railway Co.

[SEAL.] J. O'FALLON.

167 Signed, sealed, and delivered by said John O'Fallon, in behalf of the St. Louis Marine Railway Company, and for himself. The words "surviving trustee" first erased with a pen after the signature of said O'Fallon.

LOUIS G. PICOT.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on the nineteenth day of April, in the year of our Lord one thousand eight hundred and fifty-one, before me, Peter Ferguson, judge of probate of the county of St. Louis, in the State of Missouri, came John O'Fallon, for himself, as well as in behalf of the St. Louis Marine Railway Company, who is personally know' to me to be the same person whose name is subscribed to the foregoing instrument of writing, as a part' thereto, and the same person whose name is subscribed to the said instrument of writing in behalf of the St. Louis Marine Railway Company, as a party thereto; and he acknowledges the same to be his act and deed, as well for himself as in behalf of the said St. Louis Marine Railway Company, for the purposes therein mentioned.

In testimony whereof, I hereunto set my hand and affix the seal of the probate court of the county of St. Louis, at office in said county, the date and year last before written.

[L. S.] PETER FERGUSON,
Judge of Probate.

Filed and recorded April 21, 1851.

S. BARLOW, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from Marine R. W. Company and al. to the representatives of John Mullanphy, the certificate of acknowledgement, and the date of filing and recording, as the same remains of record in my office in book T, 5, page 380.

Witness my hand and official seal the nineteenth day of September, 1865.

A. C. BERNOUDY, *Recorder.*

Plat.

The map above referred to, and made part of this deed, is the same one which faces page 299.

"K.

Will of Ann Biddle.

Will of Ann Biddle.

First sheet of my will.—Ann Biddle.—In the name of God, amen.

I, Ann Biddle, widow, of the city of St. Louis, in the county of St. Louis, and State of Missouri, do make this, my will, in the manner following, (that is to say:) I hereby revoke every will and codicil
168 hitherto made by me. I constitute and appoint Richard Biddle, esq., of the city of Pittsburgh, in the State of Pennsylvania, Mr. Henry Shaw, of the said city of St. Louis, and Major John Biddle, of Detroit, and John O'Fallon, esq., and the survivors and survivor of them, executors and executor of this my last will and testament, and direct and declare that in all cases where my executors and trustees for the time being shall happen to differ in opinion, the matter of difference shall be decided by the major part or number thereof. In case my personal property, not hereinafter specially bequeathed, be insufficient to pay my debts, legacies, and funeral charges, I charge that part of my estate therewith which I shall hereinafter give and devise to my sisters and brothers, equally to be divided among them. I give, devise, and dispose of all my estate, real and personal, in the following manner: Provided always, and this my will is upon this condition and limitation, that in case any person or persons, to whom any legacy or benefit out of, from, or by reason of this, my will, shall come, shall commence any suit or suits in any court of law or equity, or other court whatever, or by any ways or means, sue and disturb, or cause to be sued and disturbed, my executors or trustees herein named, or any other person or persons whatsoever, to whom anything is by me given in this, my will, from the recovering, quiet enjoying, and possessing of what is by me given hereinafter, and in such manner as is mentioned, then my will and meaning is, in every such case or cases, that all and every the devise, gift, legacy, and benefit herein by me given to any such person or persons whatsoever, who shall so sue or disturb as aforesaid, shall cease, determine, and be utterly void. And that then and from thenceforth, I do bequeath all and every the devise, gift, legacy, and benefit, which I shall, in this my will, give to any such person or persons, unto such of my own right heirs as shall not sue and disturb as aforesaid. I give and devise to John O'Fallon, of the said county of St. Louis, and

21 years, since the twenty-sixth of January. I knew Joseph Brazeau from the moment he came to St. Louis till his death. It has been a long time since Brazeau came to St. Louis. I remember when Brazeau came here with Mr. Miceaux and Mad. Charleville, &c., with their barge and landed in front of St. Louis. I know that Mr. Brazeau occupied a piece of land near the Big Mound, in north St. Louis, a long time ago; some sixty years. Brazeau remained there till the fence was broken down. I never knew him to have any other land than that before the fences was broken down, and it was before the change of government; can't say how long; he was there about ten years before the fences fell down, and it has been about fifty-three years since the fences did fall down. The land which Mr. Brazeau cultivated was north of the Big Mound; Brazeau was on the land; can't say exactly how long; but he was on till the fences fell down; he had no other land but this. Brazeau's land lay west from the Mississippi River, and running north from the Big Mound; it ran about one hundred and fifty feet distant from the Big Mound on Hempstead street. Hempstead street lies north of the Big Mound; I have heard it called by that name; it was about one hundred and twenty or one hundred and thirty feet north of the Big Mound; can't say exactly.

188 I always understood that Brazeau had four by four arpents; that was the rule in olden times. I knew Louis Labeaume; knew him when I was quite young. When he came to the county Louis Labeaume had land near the Big Mound. There were works by which his lane was marked. After the fence fell down he was compelled to put them up. I knew of ditches north of Big Mound. The ditches were on Labeaume's land. Labeaume himself lived on the land on which the ditches were; this land was north of Big Mound, and north of Mr. Brazeau. The ditches ran from the Mississippi River upwards to the foot of the hill, and made three faces; he could not make a ditch on the bank of the river on account of the rocks, and he had a fence there. The ditches were eight feet deep, and six or seven wide. The embankments were thrown over on Labeaume's side, and pickets were stuck on the inside of the ditches, north, west, and south. Brazeau came there before Labeaume. Brazeau was not there after Labeaume laid his ditches. Jos. Brazeau left after his fences fell down, and went to live south of St. Louis upon his plantation, about one mile and a half below the court-house. Mr. Labeaume bought two arpents of land from Brazeau, and then made his ditches. There were two arpents, and Labeaume made his ditches between Brazeau and Labeaume. Brazeau after seen the ditch as often as I did. Brazeau had no house or fence on the land he sold to Labeaume; it was the common field. Labeaume had a stone house and other buildings on his land after he had his ditches; had an orchard, and last year I saw the house. Mr. Labeaume came here and two years got married; had slaves. He built his house about sixty years ago. It was abandoned after he built his house on account of the Indians. The people had to quit the place. Labeaume left the place, (I can't say when,) but he sold to Christy and another person; the two were in partnership, and bought it. I was often on the land when Labeaume lived there; knew him and his children. Mr. Christy lived there after Labeaume left, and Christy told him that he owned the place. Can't say how long Mr. Christy lived there within the line of the pickets. I knew a lime-kiln near the Big Mound; it belonged to Brazeau; was to the south of the ditch about 100 feet. The lime-kiln was there before he sold to Labeaume. Brazeau died about thirty-two or thirty-three years ago. I knew Pierre Chouteau since I have had the age of knowledge till his death. Brazeau and Chouteau lived on Main street in St. Louis district. Chouteau went and opened a

plantation in the prairie west of St. Louis; and Mr. Brazeau after his fences fell down went and settled on his plantation south of St. Louis, and died there.

Cross-examination:

I don't know how old Mr. Brazeau was when he died; was very old when he came to St. Louis; he was married; had no white children; never had any children by his wife. I might have been about five years old when Brazeau first came to St. Louis. During the time I lived in St. Louis I worked at many things; was on the rivers Mississippi, Missouri, Ohio, and worked for other men on the voyages, not myself. I had a piece of land in Point du Lac which I cultivated.

189 The fence which I said fell down was the common field fence; it was the only fence which the people had there; the fields which were cultivated were west of the fence; this fence fell down about fifty-two or fifty-three years ago. Labeaume was here before the fence fell down; Labeaume's ditches were made after the government was changed—six months after the government was changed. There was a fort built at Florissant. The depth of common fields was forty arpents. Brazeau built his lime-kiln where he did because there were rocks there. There was but two lime-kilns near the Big Mound. Persons went anywhere to get rock for making lime, provided it was along the river-bank.

Court adjourned.

MARCH 25, 1853.

Cross-examination of Jacque Labbe resumed:

It was a good place for making lime. Brazeau, before he sold it to Labeaume, cultivated wheat, corn, peas, &c.; he cut hay on the hill. The people cut hay at that time everywhere in the prairie, and if it was on any other person's land they made no complaint. Brazeau, like others, cut hay where he found it convenient—none making opposition. Brazeau cut hay on the west end of his forty-arpent tract; any one could cut hay there. After Labeaume came here, and before Brazeau sold to him, there were no fences but common field fences. The common field lots north of the Big Mound ran from the river forty arpents westwardly. Before Brazeau sold to Labeaume land was of little value, probably fifty cents per arpent. In early times everything was equal, hay, rock, timber, &c. Mr. Labeaume told me that he had bought two arpents from Mr. Brazeau. After Brazeau's fences, on his plantation near the Big Mound, fell down, he moved to his plantation below St. Louis. Sometimes they called the Big Mound the hill of the mound; sometimes the hill behind Mr. Labeaume's; and sometimes the hill at the Rocky Branch. Brazeau did not use driftwood to burn his lime; he used good solid wood; he built his lime-kiln there because conveniency of the rock to it. Brazeau did not make lime there after he moved below the city; he hired his lime-kiln to Mr. Prineau & Bizzonet, and they made lime for several years. The kiln was built against the bank, and was of rock and was built of rock; large enough to hold five hundred to one thousand bushels. Bizzonet & Pireneau hired the kiln of Brazeau, because Brazeau owned it. Prineau & Bizzonet burnt lime after Brazeau's fence had fallen down; can't say how long, whether two or three years. The kiln has gone to decay. I knew none to burn lime in the kiln after Prineau & Bizzonet used it.

Re-examined by defendant:

Labeaume entered upon the land before Brazeau's fences fell down. Labeaume made his ditches before the fences fell down, I think.
190 The fell down fifty-two or fifty-three years; fell down before the change of government. It has been fifty years since the change of the government. The common fields lot fence was not north of, but struck the gable end of the Half Moon. The common field fence was the only fence. When I speak of fence I mean the common field fence. After Brazeau built his lime-kiln he claimed a square of ground about it. I remember distinctly when the change of government took place.

Testimony of Ant'e Smith.

Testimony of Antoine Smith:

Antoine Smith, being duly sworn on behalf of defendant, says: I was eighty-one years old the sixth of January last. Have lived in St. Louis, and now live in Florissant. I knew Joseph Brazeau and Louis Labeaume; Brazeau had a piece of land on the north of the Big Mound; Brazeau's land started at the river and ran west to the slope of the hill. The cultivation of Brazeau ran north of Hempstead street—ten feet north of it. I have always heard it called Hempstead street, not otherwise. The ditch was dug about fifty-four or fifty years ago, I think. Mr. Brazeau cultivated on the south side of the ditch, about one hundred yards south of the ditch. It was about the same distance from the kiln to Brazeau's south line as from the kiln to Labeaume's. The ditch stands about one or one and a half arpents south of Rocky Branch, coming up this way, and it starts from the foot of the hill and runs east to the river, also the ditch on the north of this land. Labeaume had buildings on his land; don't know how long Mr. Labeaume lived there. He was living there when I went to Florissant, and, to the best of my recollection, was there eight or nine years. After Lebaume, I was told that Christy and Chambers went on the land.

Cross-examination:

I went to Florissant four years after the change of government. I did all kinds of work; chopped wood, cut hay, and worked in Mr. Chouteau's mill. About five or six years before the change of government the common field fence fell down. Forty-nine years the 10th March, government changed. Can't say how much Brazeau had in his piece; was told he had four arpents wide, can't say how deep; starting from the road, he cultivated to the timber on the hill. In regard to shape, the land was west from the river. I saw Brazeau working on his land there sixty-two years ago. I came here sixty-three years ago; was born at Montreal, Canada. The land which I have described is the land which I saw Brazeau cultivate. He cultivated wheat, corn, and other things raised by farmers. The hill of the Big Mound was not cultivated, it was too high. The cultivation terminated in the slope of the hill, not exactly at the foot of the hill. I heard it said that Brazeau sold a piece to Labeaume; was after the fence was down. When the ditch was making, I understood of the sale, and Miller was making the ditch. The people went everywhere on the prairie to cut hay where the land was not cultivated;
191 hay and timber were free to all. The people went anywhere to get rock to make lime, where they could find it. There were plenty of rock where Brazeau's lime-kiln was built. It was good place for making lime. I saw Major Christy on the land myself, after La-

beaume left; was some thirty years ago. I have been there lately; not very often; twice in the last two years. I went there to look at the place at Mr. Sturgeon's request. Labbe and Peter Pion, and Jo. Hortiz were with me. After selling to Labeaume, Brazeau lived in the city, near Green street, south of Mr. Clamorgan, and afterwards went to his plantation south of the city of St. Louis. Land was not worth much when Brazeau sold to Labeaume. Labeaume cultivated east and west of Broadway; he cultivated on three fronts, north, west, and south. By fronts I mean the fronts of land, the side and the behind part. He raised corn, wheat, &c., and afterwards turned it into a meadow. I have not passed there for perhaps twenty years, till within the last two years. Many changes have taken place there. I knew Bob. Moor; knew him from the time he came to the county. He died four or five years ago. When Moor first came here he hauled rock, and afterwards went and opened a plantation for himself thirty-five or thirty-six years ago. Prineau and Bizzonet made lime there at the kiln (in Brazeau's.) I have not seen the kiln since about thirty-five years ago. It has gone to decay now. Bobb. Moor had a lime-kiln south of that; Moor had his a number of years ago. Don't know who built Moor's. I suppose he built it himself. Labeaume had an orchard, garden, and fences; fences were east of Broadway, and north of Big Mound about four or five arpents; I never knew the Big Mound called other than La Grange de Terre. Labeaume's wheat field was on both sides of Broadway. At that time there was no road where Broadway now is. On the front part of his house he planted nothing; had corn west of his house. The ditch was three or three and a half feet deep and six feet wide; embankments three feet high or thereabouts. The whole hill down to Labeaume's ditch was not called the Big Mound. I never said that the foot of Grange de Terre went to Labeaume's ditch in a former deposition. In early times we sought the prairie for cultivation, if level and good; if sink holes, no difference; all land was free, and if no other had it, anybody could get it for asking Government for what was wanted. In a former deposition, I said I supposed that the Brazeau tract was four arpents front on the river, and ran forty arpents west. I can neither read nor write.

Testimony of Jos. Labarge.

Testimony of Joseph Labarge:

Joseph Labarge, sworn on behalf of defendants, says: I am sixty-eight years old the fourth of July next. Was born in Canada and came here forty-seven years ago. Knew Louis Labeaume; worked for him two years and more. Two months after I got here I worked for him. I knew Labeaume's ditches at the Big Mound. I found the ditches
192 already built, and all I had to do was to keep the fences on the embankment, three rails high; was assisted by negroes which I brought with me. There were fences along the ditches when I went to Labeaume's; in some place three and others two rails high, and had to be fixed. Labeaume's old house was already there, and I planted the orchard the year I went there. I know where the ditch is. The ditches were two and a half or three feet deep, and the embankment about two feet high. I stayed on the land of Labeaume more than two years. I knew Labeaume then twelve or thirteen years. After Labeaume left, Christy came in there; Christy went on the same land previously occupied by Labeaume. Christy had his house built near Labeaume's house. Don't know how long Christy was there, but was told he died there.

About one hundred yards south of Labeaume's land and ditch, there was a lime-kiln on the river. I knew Paul Prineau and Brizzonet, but don't know that they had anything to do with the kiln. I was told that the lime-kiln belonged to Brazeau, for it was on his land.

Cross-examined:

Mr. Labeaume said it was Brazeau's lime-kiln, and others also said the same. Labeaume told me that Brazeau had that lime-kiln and land long ago; forty or fifty years ago. When I stayed there I never saw anybody use the lime-kiln. About two years ago I passed along and saw the stones there, and the ditch; was examining the ground; went with Sturgeon, at his request, and but one time. Never went to examine the premises but that time, and with Mr. Sturgeon. For thirty years I saw no other lime-kiln in that environ, but seen others farther down. The nearest one, I think, was about half a mile from Brazeau's.

Testimony of J. B. Hortiz.

Testimony of J. Baptiste Hortiz:

Baptiste Hortiz, being sworn on behalf of defendants, says: I am sixty-one years old this month; was born at St. Genevieve; was one year old when I came to St. Louis. I knew Labeaume; was on Labeaume's land on the Big Mound in eighteen hundred and eight, seventh of March; remember the day distinctly, because on that day my father died there. I never was in the house before that. I saw the plantation when I was a boy. I recollect perfectly that there was a ditch around that land. I can't say how long Labeaume lived there, but Christy was the first person who lived on the premises after Labeaume left. Christy stayed there till he died; don't know where he died. The ditches were in good order at that time, except where they filled up a little. Christy lived within the three ditches; lived in the old house, and he built a new stone house.

193 "M."

Testimony of William Waddingham, John K. Walker, Cyrus G. Hoyt, Neal Walker, Jerusha Walker, Phineas Bartlet, and Joshua J. Childs, as follows:

Testimony of Wm. Waddingham.

Testimony of William Waddingham:

Mr. Waddingham, being sworn on behalf of defendants, says: I came to St. Louis in eighteen hundred and nineteen; have lived here ever since; knew Christy's land; when I came here it was north of the Big Mound; there were ditches there; the ditches were plain when I came here; I could see them; the land within the ditches was occupied by Christy; Christy staid there till he died; has been dead eleven or twelve years, or more; I knew a tan-yard on the south part of that tract, established by Lapsley in eighteen hundred and twenty-three; was on the N. side of the ditch; at first he thought he was on land near Dr. Farras; but learnt afterwards that he was on William Chamber's land; he had a verbal lease, I think; I never saw a written lease; Lapsley was there till eighteen hundred and twenty eight or nine; was succeeded by Martin Thomas, Wilson & Powell. The possessions extended up the river to about Webster street, northwest to where Main street is, or a little

across it; no fence was on the north end of the land, but there was on the west end by Christy's meadows; Lapsley sold out to Thomas & Wilson; don't know what rent Lapsley paid to Col. Chambers; he paid some rent. I have known William Chambers since eighteen hundred and twenty-one; I understand that Col. Chambers and Christy bought this land of Labeaume; I never heard them say. I know Lapsley's handwriting. Witness handed exhibits D and E, in the deposition, and identifies Lapsley's handwriting; also endorsement of William Chambers; said exhibits being two letters—which two letters are in the words and figures following, to wit:

Letter of Lapsley to Chambers.

ST. LOUIS, MISSOURI, *February* 14, 1825.

DEAR SIR: I take the liberty of writing to you concerning some your property that lays north of St. Louis, laid out by Mr. Christy, yourself and others being proprietors. I wish to purchase of you, sir, lots No. 1 and 2, on the river bank, for the purpose of erecting a small tannery, if you will sell them. Mr. Christy has informed me that he thought you would dispose of any of your lots in that purchase. Also Mr. Christy has told me that he was under written obligations to his partners not to sell for less than $250 per lot; but he has some lots of his own which he could sell much cheaper. I think, sir, if you could let me have them on credit, as my capital is small to begin with, that I can in time give a reasonable price for them. I wish you to write as
194 soon as possible and the lowest you can take for them, and as long a credit possible, for the season is getting advanced, and I must prepare to settle myself. Nothing more, but write in haste*e*. To which you will confer a particular favor.

Sir, I am yours,

SAM'L LAPSLEY.

MR. WILLIAM CHAMBERS.

Letter of Chambers to Lapsley.

MIDD*d*ETOWN, KY., *March* 28, 1825.

SIR: Your letter of 14th Feb. last came to hand but a few days ago, in which you address a wish to purchase two lots in north St. Louis, numbered 1 and 2, both of which are river lots, and not for sale. If any lots situated some distance out from the river would answer your purpose, I would have no objection to selling my interest in them. Or if you thought proper to put up temporary buildings on them, I would give a lease on the lots one and two, and you might remove your improvements off when you please.

Yours, &c.,

W'M CHAMBERS.

To Mr. SAMUEL LAPSLEY, *at St. Louis.*

After Christy's death I believe that his widow lived in his, Christy's, house till she died. Within a few years the outlines of the ditches were visible until the people began to build there. The land within the ditches has, in my recollection, always been called Chambers', Christy's, and Wright's land. I have only seen the above parties (Chambers, Christy, and Wright) in possession of that, except the lots sold by them to others. Lapsley sold to Thomas & Wilson his house, vats, and fixtures, in the

fall of eighteen hundred and twenty-eight, or the spring of eighteen hundred and twenty-nine. They occupied the land there but some two or three years. I don't know whether Thomas & Wilson knew that Lapsley was a tenant of Col. Chambers when they bought of Lapsley. Wilson was on the land before he bought of Lapsley; was some three or four months in making the trade. I never saw Col. Chambers on the land at the time Wilson was there. Walters was the first one I saw in there after Thomas & Wilson went out; don't know how long, but he staid there some years. Don't know who came in next after Walters. There were some persons in the house when Emerson was building boats. I saw Col. Chambers on the land when Lapsley was there, but not when Martin Thomas was there. Saw Col. Chambers about there till he died, but not on any particular land.

Cross-examined:

I saw Mr. Magwire up there some time ago; may have seen him there as far back as eighteen hundred and thirty-six, but can't say. I have heard Magwire say he claimed the land. Saw him on the ground when Emerson was building boats. Emerson did not say to me
195 that he held under Magwire. I did not hear that Thomas claimed the lot; believe there was a suit, and a compromise two years after suit brought; Chambers sued him. Lapsley went on the ground as Farrar's land, and afterwards wrote to Chambers, when he learned the land was his. In eighteen hundred and nineteen there was no fence around the land where the boat-yard was; Christy's meadow was enclosed, and all the rest lay open, except a little enclosure of a Frenchman near the south ditch. Lapsley's land was inclosed; his inclosures were twenty and thirty feet west of Maine street, and down to the ditch. Bob Moor had a kiln on the river bank, about opposite the centre of the Big Mound; this was a good while ago—when I came to the place. Paine drove Moor off in eighteen hundred and thirty-one, or eighteen hundred and thirty-two; I never saw any ruins from Bob Moor's kiln up to Labeaume's ditch. I don't know what Chouteau's north line, as surveyed by United States, was up there; don't know where William Carr's north line is. There was a little house east of Broadway, about one hundred yards, occupied by a Frenchman. A man, horse, or cow could walk over the ditch when I came to St. Louis, but the ditch was very visible.

Testimony of Jno. K. Walker.

Testimony of John K. Walker:

Mr. John K. Walker, being sworn on behalf of defendants, says: I knew Col. Chambers during his life; knew that he claimed an undivided interest in the Labeaume tract, in north St. Louis; claimed it with Major Christy and Major Wright. I have known the property since eighteen hundred and eighteen; I knew Christy and Chambers in eighteen hundred and eighteen; was agent for Chambers in 1821, '22, and '23, and probably in 1824. I think I paid Chambers' taxes on his interest in the Labeaume tract; Major Christy was living on the Labeaume tract at that time, a short distance from where the present residence is. I used to see the old ditches—one at the south, one at the north, and one at the west end. I did not reside near the property; lived in town from eighteen hundred and eighteen to eighteen hundred and twenty-six. In eighteen hundred and twenty-six I moved out of town; then moved back to town in eighteen hundred and thirty-four.

The Bellefontaine road was west of the ditches. Christy used some of the property for meadows till within twenty years; the west fence ran from south ditch to north ditch, ever since eighteen hundred and eighteen. Can't say who claimed the tract; Martin Thomas claimed some of the south part, and Strother, too. There was a suit for some land north of the north ditch; I executed a writ of possession in favor of Major Christy against Martin Thomas; Christy put in possession. I never heard of his being disturbed in his possession at the southeast corner of the tract; I don't know who was in possession. I executed a magistrate's writ against Lapsley; Powell had something to do with it; also Martin Thomas. When I went to execute the writ, Col. Chambers gave me a paper, and directed me, if they signed it, to let the parties remain in possession; I think it was (the paper) an acknowledge-
196 ment of Col. Chambers' right of possession. Lapsley signed this paper; Powell was interested somewhow in that matter; can't say what year this was. After that period Col. Chambers exercised acts of ownership till his death.

Cross-examined:

Mr. Chambers frequently talked with me about his land there, and about his lots, and about a saw-mill which was on the site of the tan-yard lot, or near it; saw-mill was built somewhere about eighteen hundred and forty-five. I think Chambers sold some lots, for I saw houses going up; I have no personal knowledge, except the execution of the writ of possession of Chambers, claiming the land within the four by four. Lapsley signed the paper; I left him in possession; I gave the paper to Chambers, I think. When I executed the writ, it was about eighteen hundred and thirty. I was a deputy sheriff in eighteen hundred and eighteen, under Joseph C. Brown; Brown acted until eighteen hundred and twenty-two, and I in his employ in eighteen hundred and twenty-two, and eighteen hundred and twenty-four I was elected sheriff; was sheriff in eighteen hundred and twenty-four. In eighteen hundred and twenty-eight and twenty-nine I was collector of State and county revenue. For two or three years before eighteen hundred and twenty, there was considerable rage in real estate; the land office was not then opened. In eighteen hundred and twenty-one there was a crash, caused by the failure of State banks, and continued until eighteen hundred and thirty-three and eighteen hundred and thirty-four. When sheriff, I sold considerable land; there were few bidders for land at the sales, excepted parties interested; for instance, the Bissell's and Dr. Bryan's farms were sold, in eighteen hundred and twenty-four, for seven dollars an acre. The quarter of block west of the jail was offered me for $500 by Mr. Van Pheel. I don't recollect that Chambers had his interest in the Labeaume tract sold by the sheriff. The Stokes property, at corner of Vine and Main streets, was sold at $2,000; the whole Missouri square for $5,100; the whole square W., less one little lot, was sold for about $500. This was about eighteen hundred and twenty-four; land was a drug in market about that time. From northwest corner down to river, I never took much notice of fence; Christy, Chambers, and Martin Thomas & Co. were lawing a great while about it. The writ of possession was not as late in date as eighteen hundred and thirty-two; I don't know that the writ was against any but Lapsley; I only got Lapsley to sign the paper.

By the court:

In the period of time spoken of, the property below the hill, on

Main (street,) in St. Louis, was comparatively much higher than it was west of the hill in town. In eighteen hundred and twenty-two, or twenty-three, I sold a large lot where Clarke's banking-house now stands—100 feet front; brought only $200 or $300. A lot at
197 south of Locust and east of Main, running to the river, sold $8,000, and there was a large brick house on it.

Testimony of C. G. Hoyt.

Testimony of Cyrus G. Hoyt:

Cyrus G. Hoyt, sworn on behalf of defendant, says: I came to St. Louis in the fall of eighteen hundred and forty-three: was in the employment of Col. William Chambers shortly after I came here, as his collector of rents and doing general business. Don't know any mark of a ditch; don't know where the ditch is; I know where Webster street is. There was a street which ran to the river immediately north of an old mill, but I don't know its name. From this street to Webster street, and from the river west to Second street, Col. Chambers owned the land. There were tenants on some portions of this property. I was agent for Col. Chambers two years, till March, eighteen hundred and forty-six. Louis Probst and Walters, also Dobb and Allen, Hall and Childs, were tenants of Col. Chambers. I made Hall, Allen, and Childs a written lease for a mill lot, No. 3, in block 288, and leased as tenants at will, lots west side of Main street, in block 292, lots 45, 46, 47, and 48, for the purpose of laying logs on them. All the leases were in writing. (Witness shown a lease dated June 1, 1845, Chambers to Hall and Childs, lots 46, 47, B. 27, and all the unleased part of B. 29, and identified it as lease made by him for Chambers. These numbers were according to a map of north St. Louis, before the present city numbers.) Hall, Allen, and Childs occupied mill lot during my agency—Chambers's property. Some lots were in blocks 292 and 293, fronting on Main street. The mill lot was in block 288, fronting on Main and Webster streets. Some of the above lots run as far west as Second street. Chambers paid taxes on this property. Walter's and Probst's houses were old log houses; Walter's was oldest; can't say how old they were; they required propping up. Their heirs of Christy and Wright held property in and about there. I know some of Wright and Christy's heirs. Dr. Smith occupied a stone building, I think fronting on Second or Main streets. I never saw any of the heirs doing anything in reference to the property in block No. 292. I have known the property to this time.

Cross-examined:

I was then at no bickerings out by any party or the other. Dobb's house was on the west side of Main street; was built during my agency, by Col. Chambers. His house, I think, was on lot 47; was a frame house. The ruins of an old mill was south of the lot leased to Hall and Childs, was brick or stone—foundation was stone; was south of the ditch, as marked on map. After Hall & Childs leased lot 3, they built their saw-mill; before that, the lot was vacant. This lease was, I think, for five years, with an extension of five years. The saw-mill was burnt down, I heard, after the fight. Can't say what lots in block 292, but
198 think that the ones nearest to Webster street run west to Second street. Col. Chambers was absent most of the time when I was his agent. He lived most of his time in St. Louis; knew of no saw-mill on that block before Hall and Childs'.

By court:

Lewis lived in lot 2, block 288; Probst on lot 1, same block as Walter's, near the west end of block 1; Walter's house was east of Main street. Lewis's had fence; Walter's had not. All Lewis's lots was inclosed.

Testimony of Neal Walker.

Testimony of Neal Walker:

Neal Walker, sworn on behalf of defendants, says: Have been in St. Louis thirty-seven years. I leased ground in St. Louis; knew a place called Labeaume's ditch. It was well marked when I saw it. I leased from Major Christy; bounded south by this ditch; (leased some three or four arpents.) It was a written lease; have not seen it for ten years; (bounded east by Main street; north by about Webster street, or went a little over Webster street, and west by Broadway;) had a fence round it; built a house on it in eighteen hundred and twenty-eight, and fence same year; was tenant of William Christy; north of the ditch the property was called the Christy, Chambers, and Wright property; I lived on it two years; Riney came into it after I left; can't say how long he was there. He went into my house; I got $50 for improvements I made north of ditch; and east of Main street Lapsley lived. Major Christy owned the tract when I came here. Christy had a house within the ditches, (Labeaume's.) I came here in eighteen hundred and twenty-seven, and worked his farm in eighteen hundred and twenty-eight; I left in eighteen hundred and thirty. Can't say positively who exercised ownership since, but I understood Christy; Christy, Chambers, and Wright did. I had a garden; the ditch was very visible; the ditch was so high that I had in one place to make very little fence.

Cross-examined:

In eighteen hundred and twenty-eight I worked Christy's farm on the shares; back of his stone house, northwest, raised corn, potatoes, &c. The fields were inclosed. He had no plough-land south of his house, but had some few lots enclosed, (yard pens.) Had nigger houses in there. In eighteen hundred and twenty-seven I first knew this tract, particularly along south line; in some places it needed fence only two rails high. The ditch from Broadway to river was not a sufficient enclosure without some fence. I sold for Powel for $50, and Riney went in under Powell, I understood. The lot I bought of Christy. I took a bond for a deed. The lot ran back to near Broadway. There was a
199 fractional lot between me and the ditch. I don't know how far it was from the ditch. I built on high ground, half way between Main street and Broadway. I think it was not three hundred feet from Broadway; think it was one hundred and fifty feet from Broadway. Between Major Christy and the ditch, except my house, there were no improvements, excepting lime-kilns on the river.

Testimony of Jerusha Walker.

Jerusha Walker's testimony:

Mrs. Walker, sworn on behalf of defendant, says: I was born in eighteen hundred and two; come to St. Louis first in eighteen hundred and twenty-one. I knew the late William Christy. I saw Col. Chambers frequently, but was not acquainted with him. I knew where Mr. Christy's house was in north (St. Louis.) I lived near Christy's house; once lived in same yard, in eighteen hundred and twenty-eight, but

before that lived a quarter of a mile below, near the river; went to this place below in eighteen hundred and twenty-seven to reside. My husband's name is Neal Walker. In eighteen hundred and twenty-seven we lived in a house that Lapsley occupied. In eighteen hundred and twenty-eight my husband rented of Mr. Christy three or four arpents; he put a fence around the ground he leased. It was situate in the south part of Christy's tract, adjoining the ditch; the ditch was south of it; Lapsley's house was east of us, on the river. There was a road, which I now think is Main street. My husband ran a fence up to Webster street, along Main street, and west to where Broadway now is, or very near there; he used the ground for garden. Don't know what rent he paid Christy. My husband bought a lot, and leased around it in eighteen hundred and twenty-eight, and sold his lease in eighteen hundred and thirty. I sold to Martin Thomas, but Powell, I think, paid the money. Don't know which claimed it, Thomas or Powell. Lapsley had a tan-yard; his tract extended to the ditch south, and north two squares. Lapsley held under Chambers and Christy; Lapsley said so. Lapsley sold out to Wilson in eighteen hundred and thirty-nine, I think. I don't know whether Wilson was concerned with Thomas and Powell; I think that Thomas and Powell were concerned together. Lapsley's premises extended to the river. Since eighteen hundred and thirty we lived awhile in central St. Louis, and after a few years moved to the county; know Christy's family well; can't say where Mrs. Christy died; she lived in Christy's house up there till her death. Mr. Chambers and Christy claimed to own the land after eighteen hundred and thirty.

Cross-examined:

Did not know that Thomas held anything, except by lease; I never heard Thomas say he held. My husband's lot ran west till very near to where Broadway is. The lot which my husband bought was got of Christy. After my husband sold out, I have not been there much; was there a few times the year after. Lapsley's premises went up as high as Webster street. I have not been there for ten years; have been along Broadway, and know where Webster street runs into it. Lapsley fenced in the southeast part, about 1 acre, after we came on the land; heard Lapsley say that he had more than he fenced in. Lapsley was there more than one year, I think. My husband had a written lease, I think.

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Testimony of Phineas Bartlett.

Testimony of Phin. Bartlett:

Phineas Bartlett, sworn on behalf of defendants, says: I came to St. Louis May 9, 1812. Saw Labeaume's ditch soon after I landed. Labeaume and family resided there when I came. Some four years after he sold to Christy & Wright; can't say that any one remained on the land when Labeaume went to Jefferson County; Christy went on the land to live; don't know how long he lived on the land, but think he lived on it till he died. I knew Lapsley; he had a tan-yard there. Knew a company called the Marine Railway Company there, about twenty-five years ago or upwards; have frequently been on the land between the ditches; knew Labeaume to own the land, and Christy, Chambers & Wright.

Cross-examined:

When I came here the county was overgrown with small trees;

towards the river the trees were larger than they were westwardly. Christy and Labeaume had cultivated fields in north part, under fence; south of these enclosures was the growth of trees. Don't know in what year Marine Railway Company commenced operations. I remember the time, though. Don't think they stayed there longer than one year. The screws were turned by horse-power; don't remember of their having any house. The rails might have been extended in an angular direction west one hundred and fifty feet, more or less, from the bank of the river. It has been twenty-five years since that railroad company broke up. I think there was a small building used by the company between the rails and the river, and north of the Pine mill. The south ditch was plain when I came here. I have crossed south ditch; also north, east, and west ditches—all. There were embankments along them. The ditches were not sufficient to keep cattle out. One of the ditches extended some two or three miles out into the prairie; there was no fence then on it. I knew George F. Strother; he came here after me; don't know when he died. (Admitted that Strother died in eighteen hundred and forty.) I am sixty-seven years old next August.

Testimony of J. J. Childs.

Testimony of Joshua J. Childs:

Joshua J. Childs, of lawful age, being produced and sworn on the part of the petitioners, on his oath deposeth and says as follows:

Question. Where do you reside?

In the city of St. Louis.

201 (By agreement, the petitioners and the counsel for Magwire, the taking of these depositions is adjourned until Monday afternoon next, the first of September, 1851, at the hour of three o'clock.

M. S. CERRE, *Clerk.*)

I, resuming the taking of these depositions pursuant to adjournment, at the time and place named, and the examination of Joshua J. Childs being resumed, he saith as follows:

Question. Did you rent of William Chambers any lands in north St. Louis in eighteen hundred and forty-five?

Answer. We, Hall, Allen & Childs, rented lot No. 3, in block No. 1, on the map of north St. Louis; but that is not all we rented of him.

(By agreement, the taking of these depositions is adjourned until to-morrow afternoon, at 3 o'clock.)

Pursuant to adjournment, I resumed the taking of these depositions at the hour and place named.

M. S. CERRE, *Clerk.*

The examination of Joshua J. Childs being resumed, he saith, on the part of the petitioners, as follows:

Question. Was there a written lease for lot No. 3?

Answer. There was.

Question. How long a time did it have to run?

Answer. I have not seen the lease for a long time. I think it had five years to run, renewable for five years more.

Question. State the names of the lessees.

Answer. Elisha Hall, Judson Allen, and myself.

Question. Did Hall, Allen, & Childs take possession of that lot? If so, how did they occupy it?

Answer. They took possession of it, and occupied it by a saw-mill.

Question. State what other lots Hall, Allen, & Childs leased of W'm Chambers.

Answer. I can state this only by examination of Exhibit C, hereto annexed. This exhibit is the lease we executed, and it mentions lots No. 4 and 6, in block 2; lots No. 8, in block 3; lots No. 52, 53, and 54, in block No. 26; lots No. 46 and 51, in block No. 27, and all the unleased part of block 29, all of which were leased to us by that lease.

Question. Did you take possession of those lots? If so, when?

Answer. We never had possession of all of those lots.

Question. State which lots you had possession of, and why you did not take possession of the others.

Answer. I do not know by the numbers of those lots which they were. We had possession of the lots below Webster street. By looking to the map of north St. Louis I see that we had possession of lots No. 46
202 and 51, in block No. 27. I believe that those are the only lots we had possession of under that lease. We did not take possession of the others because, when we went there, all the land above the ditch was covered with logs belonging to Judson & Brotherton, or Marshall Brotherton.. My brother's log-yard ran up to the ditch, so that there was no room there for a man to do anything at all; and it was only by an understanding with Col. Chambers that I should have this property to lay my logs on, that I leased the property to put a mill on. When we had the mill built, and had no place to put the logs, I went to Col. Chambers and had the lease executed, which is hereto annexed as Exhibit "C." I then requested Brotherton to surrender to us the lots which we had leased. He agreed to, and did, surrender the lots below Webster street, and retained the others. Brotherton had occupied some lots below Webster street, belonging to Christy and others, which he said he had the privilege of using. These he proposed to exchange with us for the lots we had leased above Webster street, which was accordingly done.

Question. State what lots Hall, Allen, & Childs finally occupied.

Answer. We occupied, by a saw-mill, lot No. 8, in block 1; and all the vacant lands bounded south by Lebeaume's ditch, east by Main street, north by Webster street, and west by Broadway, with logs and lumber. By Lebeaume's ditch I mean the water-course that runs through there towards the river.

Question. How long did Hall, Allen & Childs continue to occupy these lots?

Answer. We occupied them until Emerson and I bought Hall & Allen, which must have been in the spring of eighteen hundred and forty-six, I think. I refer to Primus Emerson.

(By consent, the further taking of these depositions is adjourned until to-morrow at 3 o'clock.)

M. S. CERRE, *Clerk.*

WEDNESDAY, *September* 3, 1851.

Pursuant to adjournment, I resumed the taking of these depositions at the hour and place named. The examination of said Joshua J. Childs, on the part of the petitioners, resumed, deponent saith:

Did you ever lease the remaining lots south of lot 3, in block 1, together with fractional lot A, in the said block? If so, from whom and when?

Answer. I never had any lease of those lots.

Question. Did you ever rent them from any one? If so, from whom and when?

Answer. When I built the mill I got from Mr. Hoyt, the agent of Col. Chambers, the privilege of putting my cistern on the lot next south of of the mill.

Question. At the time you first built your mill there, who occupied the land south of it?

Answer. There were several small tenements there. I don't
203 know who occupied all of them. I understood that John Lewis had several of them.

Question. Did John Lewis own the land, or did he lease it? If he leased it, state from whom?

Answer. I think he leased a lot, or part of a lot, from Col. Chambers. I think that this was lot No. 1, in block No. 1.

Question. Did you purchase Lewis's interest in the said lot or lots which he occupied? If so, when?

Answer. I bought Lewis off the lots there, and put a boat-yard upon it in the fall of eighteen hundred and forty-six, I think.

Question. What do you mean by the expression you "bought him off?"

Answer. I mean that I paid him for the tenements on the lot.

Question. From whom had Lewis leased the property which he occupied there?

Answer. I think that he leased it from Col. Chambers.

Question. Do you not know that he leased it from Col. Chambers, or his agent?

Answer. I did not see him lease it.

Question. Have you ever seen the lease?

Answer. I have seen it.

Question. What was the lease?

Answer. It purported to be executed by Col. Chambers and John Lewis.

(Objected to by Magwire.)

Question. Before you purchased out Lewis, did you have any conversation with J. H. Sturgeon, as agent of Chambers, in relation to purchasing Lewis's interest in those lots, as in the lease, or in relation to the occupation of any of those lots south of the saw-mill? If so, what was it?

Answer. I asked Sturgeon whether he would object to my buying out those persons who occupied the lots, and if he did, whether he would lease them to me for the purpose of establishing a boat-yard there—I mean, if I bought off the incumbrances, whether he would lease to me the whole ground south of the mill. He told me that he had no objection to my buying off the tenements, but that he desired time to write to Col. Chambers, or his uncle, Robert Tyler, I forget which, before he would give me an answer as to terms. I represented to Mr. Sturgeon that those houses were nuisances there, and that they might at that time take fire and burn the mill down, and that I wished to put a boat-yard there.

Question. Who was concerned with you in this boat-yard?

Answer. Mr. Emerson.

Question. Did Mr. Magwire have at any time any interest in it?

Answer. He did not; at least as long as I had anything to do with it.

Question. Had he been previously concerned with Mr. Emerson in a boat-yard?

Answer. Not that I know of my own knowledge.

204 Question. Do you know from admission of Mr. Magwire?

Answer. As far as I know from his admissions, Mr. Magwire

was never concerned with Mr. Emerson, but Mr. Magwire had a boat-yard, and employed Mr. Emerson in it.

Question. Was Mr. Magwire's boat-yard broken up when Emerson came down to yours?

Answer. It was.

Question. At the time you purchased out Lewis, did you take any written assignment of his interest from him?

Answer. I did.

Question. Where is it?

Answer. I do not know.

Question. To whom was that assignment made; to yourself alone, or to you and Emerson?

Answer. I cannot recollect.

Question. When did you last see that instrument, and in whose hands was it?

Answer. I think it was among the books and papers of Childs & Emerson until I left there.

Question. Did you at any time have any conversation with Magwire in relation to obtaining a lease from Col. Chambers, or his agent, of those lots on which the boat-yard was afterwards placed? If so, what was it?

Answer. I at that time conversed with Mr. Magwire almost every day in relation to our business. I don't remember particular any conversation in relation to that matter. He thought it was best for us to have the boat-yard there.

Question. Did he at any time suggest to you, or recommend to you, to obtain from Col. Chambers, or his agent, a lease of those lots?

Answer. I do not remember that he did.

Question. You say that you had frequent conversations with Mr. Magwire in relation to your business. What business do you refer to?

Answer. The building of boats and carrying on a saw-mill; the business of Childs & Emerson.

Question. Did Mr. Magwire know of, or had he any part in, procuring this assignment of Lewis's interest in these lots before spoken of.

Answer. I think that he knew of it.

Question. Did you ever have in your possession the lease of Chambers to Lewis?

Answer. I did, or had a paper which purported to be such a lease.

Question. Did you have it in your possession before and at the time of Lewis's assignment to you?

Answer. I had seen it before then, and think that I had had it in my possession at the time of the assignment of Lewis to me.

Question. Did Mr. Magwire ever see it, to your knowledge?

Answer. I can't swear that he ever did see it, but I think that he has seen it, that I have shown it to him.

205 Question. What was the consideration of the purchase of Lewis's interest in those lots and improvements?

Answer. I gave him five hundred dollars.

Question. To whom did the improvements belong?

Answer. I never knew of any one setting up a claim to them, except Lewis. They belonged to me after my purchase of them from him.

Question. In that assignment, was an' liberty given to Lewis to remove the improvements?

Answer. I do not remember whether there was or not.

Question. Who did remove them, and when?

Answer. Lewis removed them shortly after the assignment.

Question. After this removal by Lewis, was the ground destitute of improvements?

Answer. It was. There was an old fence on it, but I believe that he removed that too.

Question. Have you now any doubt that the assignment above spoken of gave Lewis liberty to remove the improvements? What are your impressions about it?

Answer. My impression is that there was nothing in the assignment that gave Lewis permission to remove the improvements, but that it was understood between us that I did not want them, and that after he had made the bill of sale to me I sold the improvements back to him, with the understanding that he was to remove them.

Question. What did Lewis pay you for these improvements?

Answer. One dollar, I believe.

Question. How long after this assignment to you and Emerson did you proceed to make a boat-yard there?

Answer. Right away. I believe just as soon as Lewis got the houses off.

Question. You say that Emerson was carrying on a boat-yard for Magwire. Was this the boat-yard that you and Emerson purchased of Magwire? and if so, what did you pay him for it?

(Objected to by Magwire.)

Answer. If I said that Emerson was carrying on a boat-yard, I said that I so understood. I understood it from Emerson and from Mr. Magwire too. I think I had no other means of knowing that the yard was carried on by Magwire when I spoke of purchasing a boat-yard. I meant the tools and appurtenances belonging to the yard, not the land itself, of course. I don't recollect what we paid for it. I think about nine hundred dollars, though I won't swear to it. This was the boat-yard. The boat-yard we purchased of Magwire was just south of Mr. Clark's saw-mill and north of Market street. This is the place where Mr. Magwire carried on the boat-yard.

Question. About what time was this purchase made?

Answer. It was in the early part of the fall of eighteen hundred and forty-six, I think.

Question. Did you and Primus Emerson enter into partnership for the purpose of boat-building and carrying on the saw-mill business, immediately after or before the purchase of the boat-yard referred to above? If so, when and where?

206 Answer. I had nothing to do with the boat-building business until after they had commenced building boats on the litigated land in block No. 1. We entered into partnership before Emerson came down there. Our partnership was in boat-building at the place stated. I don't remember the date. It was before or about the time we purchased Mr. Magwire's fixtures from him.

Question. Did Emerson and yourself understand that he was your partner in the leases that you had from Chambers?

Answer. Emerson and I was equally interested in carrying on the boat business and milling there. I know that Emerson and I, together, bought out Hall & Allen's interest in the lease, and the mill erected there. I don't remember that Exhibit "C" was mentioned in the bill of sale.

Question. Did you not consider that you obtained a transfer of Hall & Allen's interest in the lease mentioned in Exhibit "C," as well as in the lease for the mill lot?

Answer. In purchasing the logs, &c., appertaining to this mill, and

his heirs, in trust, and for further assurance to the purchasers thereof, all of the lands and property sold, conveyed, or disposed of, or which I shall hereafter sell, convey, or dispose of, that is to say, such part or parts so sold, conveyed, or disposed of, or which I shall sell, convey, or dispose of, to the use, respectively, of all such purchasers, their heirs, and assigns forever. I am seized and possessed of considerable real and personal property given to me by deceased husband, Major Thomas Biddle, of St. Louis, by his will, wherein he did recommend to me the children of his brother Major John Biddle, and feeling a most affectionate respect for the memory of my said husband, and anxious to comply with his request, I give and devise unto the said John Biddle, of the city of Detroit, State of Michigan, all the real estate of which I am seized or possessed by and under the will of my said husband, wherever the same be situate, except such parts which I have sold or conveyed, or shall in any way dispose of during—

Second sheet of my will.—Ann Biddle.—my life, or shall in this will, or by any codicil, or will, give to any other person or persons, for 169 the further description of which, and with no intent to enlarge or restrain the said devise. The said real estate is situate as follows, in what is known as the Marine Railway tract, and in blocks numbers 143, 144, 145, 27, 30, 124, 70, 23, in said city of St. Louis, in the body of the said county of St. Louis, in the State of Illinois, and in the State of Arkansas. Also, sixty shares of stock, more or less, of the Missouri Insurance Company, to the use of him, the said John Biddle, for and during his life; and from and after his death to the use of all and every the child and children of the said John Biddle, (equally to be divided between them,) and their heirs forever: Provided always, and my will, nevertheless, is, that the said estate and estates of the said child and children of the said John Biddle shall be subject to such provisions and trusts as he, the said John Biddle, shall, by any deed or deeds, writing or writings, to be by him sealed and delivered in the presence of two or more credible witnesses, or by his last will and testament in writing, give and direct: Provided also, and my will further is, that it shall and may be lawful to and for the said John Biddle of the said real estate to receive and take the rents and profit thereof, and also devise, lease, or grant any part or parts thereof, or the whole, to any person or persons whatever, for any term or number of years whatsoever.

I give and devise to the city of St. Louis all the following described parcels of ground, streets, and alley, opened and to be opened through my tract of land, situated in the city of St. Louis, three arpents in breadth on Broadway, and bounded on its southern side by Biddle street, to wit, all the streets and alleys, Thirteenth street included, as laid down on the recorded plat of my addition to said city; also Fourteenth street, Fifteenth street, Sixteenth street, Seventeenth street, and Eighteenth street; that is to say, sixty feet of ground in breadth from east to west, for each street to be continuations of the same streets as laid out by the commissioners in partition amongst the heirs of John Mullanphy, on the north of my said land to Biddle street. Also, all my piece of ground lying between said Thirteenth street and a line to be run from Biddle street to my northern boundary line, (270) two hundred and seventy feet eastward; eastward and parallel with said Fourteenth street, being, by computation, one hundred and thirty-four feet in breadth from east to west, by about five hundred and fifty-five feet in length from north to south, in trust for the following purposes, to wit: that the southern part thereof, to wit, eighty-four feet in breadth from north to south, shall be forever used as a market house or market place; the

remaining fifty feet in breadth thereof shall be a public street, to which I shall hereafter refer by the name of High street; also a street of sixty feet of ground in breadth from north to south for its entire length from Broadway to said Eighteenth street, the southern line of said street to touch the northeast corner of my brick mansion in block number (556) five hundred and fifty-six, and to be run parallel with the northern boundary line of my said tract of land. These devises—

Third sheet of my will.—Ann Biddle.—to said city of St. Louis,
170 I further declare, are upon this condition: that the same shall always be kept open as streets, and a market-house and market-place as aforesaid, forever. I give and devise unto Louis G. Picot of the city of St. Louis, and his heirs, to and upon and for the uses, trusts, interests, and purposes, and with, and subject to the provisos, conditions, and limitations hereinafter mentioned and expressed of and concerning the same, the following described real estate, that is to say, all my lands, lots, and parcels of ground, tenements and hereditaments, situate, lying, and being in all that part of the city of St. Louis whatsoever, south and southwest of Carr street, as said street is now laid out northward of blocks number (18) eighteen, (23) twenty-three, and (70) seventy, saving and excepting only two lots of ground fronting on Collins street, (which two lots I shall hereinafter otherwise give and devise,) and excepting that real estate given to me by the said will of my said husband, for further description of which I described the same as follows: All the real estate which I have inherited from my father, John Mullanphy, situate within said limits, and all the real estate which I have purchased, situate within said limits of which last the premises now occupied by Norman, and Masterton, and the National Hotel, are parcel. There is one encumbrance of five thousand dollars or upwards upon said National Hotel, which I will and direct, and shall be paid out of my estate not specifically devised or given herein. I also give and devise unto said trustee and heirs to the same uses, all my ground being block No. 556 of the city of St. Louis, and which is surrounded and bounded by Broadway, Biddle st., Sixth street, and on the north by that forty-arpent tract of ground described by the commissioners in partition among the heirs of John Mullanphy, in the words, to wit: a piece of ground conveyed by the commissioners of the estate of Auguste Conde to John Mullanphy, by deed bearing date April, 1832, recorded in said office in book R, page 667, and described as follows: "All that certain tract, piece or parcel of land, situate in the county of St. Louis and State of Missouri, containing forty arpents, being in the same tract of land originally granted to Auguste Conde, as mentioned in the said order of court, a map of which is hereto annexed, marked "B," and to this tract of land reference will be hereafter in this will made as the tract "B."

I also give and devise unto the said trustee and heirs to the same uses, one equal third part of all my land in said tract "B," and which for further description I here designate as sixteen lots of ground each twenty-seven and one-half feet in breadth by about one hundred and twenty-five feet in depth, and a parcel of ground being one arpent in width by eleven chains and seventy-five links in length from east to west; each numbered (1) one, I will and direct that the said sixteen lots shall be divided among the devisees thereof, without partition of the particular lots, of my share, and portion of a tract of land six arpents in breadth more or less, fronting on Broadway, and forty arpents in depth westward, being the same tract described by the commissioners—

Fourth sheet of my will.—Ann Biddle.—in partition among the
171 heirs of John Mullanphy, as follows, parts thereof, to wit: two

arpents in front, by forty arpents in depth, as being conveyed to said John Mullanphy by Jean Baptiste Provenchez, part thereof, to wit: one arpent in front by forty arpents in depth, described as formerly belonging to Louis Chanceillier; part thereof, to wit: one arpent in width by forty arpents in depth, as being conveyed by Joseph C. Brown, sheriff, to the said John Mullanphy, part thereof, to wit: two arpents in front by forty arpents in depth, as being conveyed to said John Mullanphy by P. Chouteau and Lucie, his wife, all of which tracts of land are described by said commissioners in substance as follows: The several tracts or parcels of ground above described are so situated as to constitute one tract of land, a plat of which, marked with the letter "A," is annexed to the report of said commissioners, and made part thereof, which they further describe as nearly one-half thereof, lying within the said city of St. Louis; this parcel of ground will hereafter be referred to in this will as the tract "A," now first and always in the devises of my share therein, saving and excepting that piece or parcel thereof which I shall hereinafter give and devise to Bishop Peter Richard Kendrick and his heirs in trust, then of my remaining share and portion of said tract A, which consists of twenty-two lots and parcels of ground, be they more or less, eached marked and numbered (1) one, with direction that the said lots which are east of Ninth street shall not be further subdivided in partition. I give and devise also under the said trustee and heirs to the same uses, one equal third part thereof. Of all my land in what is known as the Marine Railway tract, (which said tract is understood by me as embracing blocks numbered 237, 238, and 250 of said city of St. Louis,) which I am seized or possessed of, as child and heir of the said John Mullanphy, first and always, in the devises of the same, saving and excepting that lot of ground in said block two hundred and thirty-seven, eighty-two (82) feet more or less in breadth on the Mississippi River, and one hundred and forty feet in length, more or less, to an alley; which said lot of ground I shall hereafter specifically devise and give; then of my remaining share or portion of my lots of ground therein I also give, and grant, and devise unto the said trustee and heirs to the same uses, one equal third part thereof, and which I direct shall be allotted, if practicable, without subdivisions of the particular lots; I also give and devise unto the said trustee and heirs to the same uses, one equal eighth part of all that piece of my land situate and lying westward of said Eighteenth street, being part of my said tract of land, three arpents in breadth by forty arpents in length, marked and designated on Hutawas' map published 1842 of said city of St. Louis, with my name, under John B. Langonman, for one part thereof, and Peter Chouteau in right of Simon Consat, for the balance thereof. That said part of said tract is bounded on the north by the said tract "B," commencing within or about the western boundary line of said city of St. Louis, and extending westwardly to the end thereof—

Fifth sheet of my will.—Ann Biddle.—be by computation four-
172 teen arpents in length, and which shall be hereafter in this will designated as tract "Z," which I will and direct shall be divided into eight parcels or pieces of equal size, and apportioned by lot to the several devisess thereof. I also give and devise unto the said trustee and his heirs to the same uses, all my land, estate, right, title, and interest, claim and demand, real and personal, in possession and expectancy in, of, and to which I am seized, possessed, and entitled in the State of New York, parcel of which is my share and portion of the estate of my father, the said John Mullanphy, in the city of New York. I also give and bequeath unto the said trustee and heirs to the same

uses, one-half of my stock or share in the Louisville & Portland Canal Company, in the Bank of Kentucky, in the State Bank of Louisiana, and in the St. Louis Gas Light Company, and all my other stock whatsoever. I also give, devise, and bequeath unto the said trustee and his heirs to the same uses, one equal sixth part of all my lands, estate, real and personal, divided and undivided, in possession and expectancy, claim and demand in, of, and to which I am seized, possessed, and entitled as child and heir of said John Mullanphy (first and always in the devises of the same, saving and excepting such part and parts thereof which I shall otherwise specifically give or in any way dispose of) whatsoever, and whensoever the same may be or are situate, for further description of which, I describe the same as all my share and portion of the lands of the estate of my said father, or proceeds of said lands now and under order of sale by the St. Louis court of common pleas, all my share and portion of undivided lands and of divided lands not otherwise disposed of—all my share and portion of the Dubuque mines, &c. I also give, devise, and bequeath to said trustee and his heirs, to the same uses, all my lands, estate, real and personal, in possession and expectancy, chose in action, right, title, interest, claim, and demand, whatsoever and wheresoever the same be or are situate, in, of, or to which I am seized, possessed, or entitled, in any other right or rights than as child and heir of said John Mullanphy, (and not this will specifically given or otherwise disposed of,) for further description of which I describe the same as follows: All my mortgages or deeds of trust, (except the mortgage hereinafter given to Bishop Kenrick,) judgments, bonds, notes, open accounts, and all and every evidence of debt or money due me, among which are those of Col. William S. Harney, amounting to twenty thousand dollars and upwards, together with all the rent and residue of all my money, bank bills, &c. To have and to hold all the foregoing described real and personal property and all other things given and devised to said trustee and heirs, to the use of my sister Mary Harney, wife of the said Colonel William S. Harney, to be enjoyed by her seperate and apart from her husband, and for and during her natural life, and from and after her death to the use of all and every the child or children of my said sister, Mary Harney, (then living,) and of the issue of all and every such child or children that may have died, and of the heirs and assigns of such child or children and issue forever, said children to share equally as tenants in common and the issue of any deceased child to take a child's portion; and in case my said sister, Mary Harney, should have no issue at the time of her death, then to the use of my own right heirs forever. I here direct and declare, that all and every of the estates, lands, tenements, hereditaments, interests, chattels, devise, gifts, legacies, and all other things which I have given, devised, and bequeathed unto the said trustee, Louis G. Picot and his heirs, are with specified powers, and upon the special trusts following, to wit: that it may and shall be lawful to and for the said trustee, and his heirs, by indentures to be sealed, to demise, lease, or grant all and singular the said lands, tenements, and lots of ground (hereinbefore given and devised) unto any—

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Sixth sheet of my will.—Ann Biddle.—person or persons whomsoever in possession or revision, for any term of number of years, absolute, not exceeding twenty-one years in possession, and not by any revision or future interest, so as every such demise, lease, or grant to be made as aforesaid in revision, together with all devises, leases, and grants, then in being of the same premises, be determinable at the expiration of twenty-one years at the most, and so as by every such demise, lease, or grant,

there be reserved and made payable, during the continuance thereof, to be incident to, and go along with the *remainder* of reversion of and in the premises to be comprised in such demises, leases, or grants, respectively, the best and most improved yearly rent that can be reasonably had or gotten for the premises therein comprised, at the time of making such demises, leases, or grants respectively, without taking any premium or forfeit for or in respect of the making any such demise, lease, or grant; and so as in all and every such demise, leave, or grant, so to be made as aforesaid, there be continued a covenant for the payment of the rents and performance of the agreements therein respectively reserved and stipulated; and a proviso or condition of re-entry, in the case the rents thereof respectively reserved be behind and unpaid when due, for the space of twenty-one days, and so as the leases shall and do execute counterparts of such demises, leases, or grants, respectively; and as, to, for, and concerning the land or bank stock, mortgages, deeds of trust, judgments, bonds, notes, evidences of debt, monies, and all the other said personal property, and the interest and income therefrom, and the rents, issues, and profits of the said real estate, and the interest and income thereof, that he, the said trustee and heirs shall and may at any time *times* during the life of my sister, Mary Harney, with her consent in writing, sign with her hand, lay out and expend the same, or any part thereof in buildings, erections, and improvements, or in the purchase of other real estate or interest, or lay out the same in any real securities, or in the bonds of the Government of these United States, at interest, but not in any stocks or shares of any bank or incorporated company; all wh ch real estate so purchased as aforesaid, and all securities so obtained as aforesaid, together with the said canal and bank stock, and securities and other evidences of debt and personal property herein given,

together with the rents, issues, profits, and interests of the same,
174 may be from time to time sold, assigned, transferred, and disposed of, and the monies arising thereby, again invested or laid out in or upon any new or other like real estate and securities, buildings, and improvements, as to him, the said trustee, shall seem meet, so as during the life of my said sister, Mary Harney, the same be done with her consent as aforesaid; and from and after her death, and during the minority of the said children, then, with the written consent as aforesaid, of any person whom she, the said Mary Harney, (my sister,) may by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of two or more credible witnesses, or by her last will and testament in writing, direct and appoint: Provided, always, nevertheless, such person be not the said Colonel William S. Harney, or any future husband, and in—

Seventh sheet of my will.—Ann Biddle.—default of such directions or appointment as aforesaid, then as to the said trustee shall seem meet and proper, and that he, the said trustee and his heirs do and shall stand and be seized and possessed of all and every the estates, buildings, securities, &c., whereon or upon which the said trust, moneys or any part or parts thereof, shall be invested or laid out, and the dividends, interests, and annual produce thereof respectively, upon and for such trusts, interests, and purposes, and with and subject to such powers and provisos as are herein mentioned and expressed, of and concerning the devises, gifts, and legacies aforesaid: Provided always, and my will and meaning further is, that he, the said trustee and his heirs shall and do pay the said rents, issues, interests, and profits, or such parts thereof to my said sister Mary Harney, to her sole and separate use, as she shall demand, during her life; and at her death, if all and every the child and children

of my sister, Mary Harney, shall have attained their full age of twenty-one years, then to make distribution among them in a lawful manner, of all the said real and personal property, but without selling the said real estate, and without subdividing any minute lot of ground, and the profits thereof, share and share alike, and the issue of any child or children deceased, to take such parent's share respectively; but if any such child or children of my said sister, Mary Harney, shall be within the age of twenty-one years aforesaid, then I do further authorize and empower the said trustee and his heirs to retain and keep in his and their hands, during such minority, and with the same powers, and subject to the same trusts, as before specified, and subject to the consent as aforesaid of any person appointed by my said sister, Mary Harney, as aforesaid, and in default of such appointment, as to said trustees shall seem meet and appropriate, the same interest and income thereof to the maintenance and education of her said children, or any of them, or the issue of any such child or children, deceased, and to pay the same interest and income thereof to such child or children as have attained, and shall thereafter attain, the full age of twenty-one years; that is to say, to each such child, or the issue of said child, his or their share and portion respectively, and when and after all and every such and children of my said sister, Mary
175 Harvey, shall have attained the full age of twenty-one years, then the said estate of said trustee and his heirs shall end, expire, and distribution shall be made as aforesaid: Provided, always, and my will nevertheless further is that the receipt, in writing of my said sister, Mary Harney, or of any of her issue, for any sums of money paid to her and them by virtue of this my will and testament, shall be good and sufficient discharge unto the said trustee and his heirs therefore, her or their coverture or covertures notwithstanding. And that it may and shall be lawful to and for the said trustee, the said Louis G. Picot and his heirs, by and of all or any moneys which by virtue of this my will, and the trusts herein declared shall come—

Eighth sheet of my will.—Ann Biddle.—to his or their hands to deduct and retain to his and their own use five per centum on all the rents, issues, profits, interests, and income, which shall be actually paid, received, collected, or reinvested, which shall be in full for all his or their work and labor in and about said business; and also by and out of said rents and profits to make all necessary repairs, and pay all taxes, insurances and other necessary charges in and about the said estates, real and personal, given him in trust; and also that my said trustee and heir shall not be charged or chargeable with or for any sum or sums of money other than as shall actually come to his and their hands, by virtue of this my will, nor with or for any loss or damages, which may happen in or about the execution of all or any of the trusts hereby in him or them reposed, without his or their willful default; and I give and devise unto the said Louis G. Picot, and his heirs to and upon and for the uses, trusts, interests, and purposes, and with and subject to the powers, provisos, and limitations hereinafter mentioned, and expressed, and referred to, of, or concerning the same, all those my lands, pieces, and parcels of ground, tenements, and hereditaments, situate, lying, and being in block number nineteen, of the said city of St. Louis; being that block bounded on the east by the Mississippi River, on the north by Biddle street, on the west by Jefferson, or the continuation of First Maine street, and on the south by Carr street, to wit: Lot numbered three (3) by the commissioners, in partition among the heirs of John Mullanphy, being sixty-eight feet in breadth, more or less, on the said river, and sixty-four feet in breadth, more or less, on an alley, and by

computation, two hundred and twenty feet in length from east to west; which said lot of ground is bounded on the east by said river, on the north by lot number four, on the west by said alley, and on the south by number two, and lot likewise numbered three (3) by said commissioners, being 62¼ feet in breadth, more or less, on said Jefferson street, and sixty-three (63) feet, more or less, on said alley, and averaging about 143 feet in length, more or less, from east to west, which said lot of ground is bounded on the west by said Jefferson street, on the north by lot number 2, on the east by said alley, and on the south by lot number 4; also, I give and bequeath unto the said trustee and his heirs, to the same uses, my two negro slaves, known by the name of Fanny, and Henry her son, to have and to hold the said land and slaves to
176 the use of my god-daughter and niece, Ann B. Harney, daughter of the aforesaid Colonel William S. Harney, and the said Mary, his wife, to be enjoyed by her separate and apart from any husband she may have for or during her natural life, and from and after her death, to the use of all and every of her child or children, that may have died, and of the heirs and assigns of such child or children and issue for ever; said children to share equally as tenants in common, and the issue of any deceased child to take a child's portion, and in case my niece Ann B. Harney shall have no issue—

Ninth sheet of my will.—Ann Biddle.—at the time of her death, then to the use of her own right heirs forever; and I here direct and declare that the said devise and gift of said land and slaves are, with similar powers and upon similar trusts, as hereinbefore mentioned and expressed, of, and concerning the preceding trusts estate, wherein my said sister, Mary Harney, is tenant for life; and that said trustee and heirs shall act in their trust during the minority of said Ann B. Harney, with the consent as aforesaid of my said sister, Mary Harney, of her appointee after her death; provided such appointee be not the said Col. W. S. Harney; and for default of such appointment, as to said trustee shall seem meet. I give and devise unto Catherine Graham, wife of Major Richard Graham, of the county of St. Louis, all my ground, situate and bounded as follows: On the north side of tract "B," on the east by said High street, on the south by Biddle street, and on the west by Fourteenth street, in the city of St. Louis. This piece of ground shall be laid out two hundred and twenty feet in breadth from east to west. Also, one of my said eight pieces in that part of my three by forty arpent tract of land without the city of St. Louis, hereinbefore designated as tract "Z," to be allotted to her as aforesaid. Also, one-fifth part of the remaining two-thirds of my share and portion in the said one by forty arpent tract of land, hereinbefore designated as tract "B." Also, one-fifth part of the residue of my share in the six by forty arpent tract of land, hereinbefore designated as the tract "A;" that is to say, first excepting that piece which I shall hereinafter give to Bishop Kenrick, and what I have given to L. G. Picot, in trust. Also, one-fifth part of the residue my share in right of my father, not otherwise given and to be given, of the said (Marine Railway tract.) Also, one-sixth part of the residue of all my shares of all real and personal property whatever, of which I am seized, possessed, or entitled to as child and heir of said John Mullanphy, (not otherwise given or to be given,) which, for further description, may be as follows: lands divided and undivided, ordered or not ordered to be sold, or the proceeds of such sales, and my share in the Dubuqe mines, to the use of the said Catherine Graham, my sister, and her heirs forever.

I give and devise unto my sister Jane Chambers, wife of Charles

Chambers, all my ground (situate in the city of St. Louis,) lying and bounded as follows: On the north by said tract "B," on the east by said Fourteenth street, on the west by said Fifteenth street, on
177 the south by said Biddle street. Also, one of my eight pieces of ground in that part of my three by forty arpent tract of land without the city of St. Louis, hereinafter designated as tract "Z" to be allotted to her as aforesaid. Also, one-fifth part of the remaining two-thirds of my share and portion in the said one by forty arpent tract of land, hereinafter designated as tract "B." Also, one-fifth part of the residue of my share of the said six by forty arpent tract of land, hereinafter designated as tract "A;" that is to say, first excepting the piece of ground thereof which I shall herein give to Bishop Kenrick, and the third part thereof, which I have given to the said—

Tenth sheet of will.—Ann Biddle.—Picot in trust. Also, one-fifth part of my share, in right of my father, not otherwise given or to be given, of the said Marine Railway tract. Also, one-sixth part of the residue of my share, and all real and personal property whatsoever of which I am seized, possessed, or entitled to as the child and heir of said John Mullanphy, (not otherwise given or to be given,) which, for further description, may be as follows: lands divided and undivided, ordered and not ordered to be sold, or the proceeds of such sales, and my share of the Dubuque mines, to the use of her, the said Jane Chambers, my sister, and her heirs forever.

I give and devise unto my sister Eliza Clemens, wife of James Clemens, jr., of the said city of St. Louis, all my ground, except the street before given, situate and bounded as follows: On the north by said tract "B," on the east by said Fifteenth street, on the south by said Biddle street, on the west by said Sixteenth street. Also, one of my eight pieces of ground in that part of my three by forty arpent tract of land without the said city of St. Louis, hereinbefore designated as tract "Z," to be allotted to her as aforesaid. Also, one-fifth part of the remaining two-thirds of my share and portion in the said one by forty arpent tract of land, hereinbefore designated as tract "B." Also, one fifth part of the said residue of my share of the said six by forty arpents tract of land, hereinbefore designated as tract "A;" that is to say, first excepting the piece of ground thereof which I shall herein give to Bishop Kenrick, and the one-third of the remaining portion thereof, which I have given to said trustee. Also, one fifth part of the said residue of my share, in right of my father, not otherwise given or to be given, of said Marine Railway tract. Also, one-sixth part of the residue of all my share of real and personal property whatsoever of which I am seized, possessed, or entitled as the child and heir of said John Mullanphy, (not otherwise given or to be given,) which, for further description, may be as follows: lands divided and undivided, ordered and not ordered to be sold, and the proceeds of such sales, and my share in the Dubuque mines, to the use of her, the said Eliza Clemens, my sister, and her heirs forever.

I give and devise unto my sister Octavia Delaney, wife of Dennis Delaney, of said city of St. Louis, one of my eight pieces of ground in that part of my three by forty arpent tract of land without the said city
178 of St. Louis, hereinbefore designated as tract "Z," to be allotted to her as aforesaid. Also, one-fifth part of the remaining two-thirds of my share and portion in the said one by forty arpent tract of land, hereinbefore designated as tract "B." Also, one-fifth part of the said residue of my share of the said six by forty arpents tract of land, hereinbefore designated as tract "A;" that is to say, first excepting the piece of ground thereof which I shall herein give to Bishop Kenrick, and the one-

third of the remaining portion thereof which I have given to said trustee. Also, one-fifth part of the said residue of my share, in right of my father, not otherwise given or to be given, of the said Marine Railway tract. Also, one-sixth part of the residue of my share of all real and personal property whatsoever of which I am seized, possessed, or entitled to as child—

Eleventh sheet of my will.—Ann Biddle.—and heir of John Mullanphy, (not otherwise given or to be given,) which, for further description, may be as follows: lands divided and undivided, ordered and not ordered to be sold, and the proceeds of such sales, and my share in the Dubuque mines, to the use of her, the said Octavia Delaney, for and during her life, and from and after her death to the use of the heirs of her body, living at the time of her death; and for default of such issue, then to the use of my own right heirs forever.

I give and devise unto my brother Bryan Mullanphy, of said city of St. Louis, all my ground except the street before given, and the part otherwise disposed of, situate and bounded as follows: on the north by said tract "B," on the east by Sixth street, on the south by said Biddle street, and on the west by Seventh street, in said city of St. Louis. Also, one-half of my stock or shares in the said Louisville and Portland Canal Company, in the Bank of Kentucky, and in the State Bank of Louisiana, and in the St. Louis Gas Light Company. Also, one of my eight pieces of ground in that part of my three by forty arpent tract of land without the said city of St. Louis, hereinbefore designated as tract "Z," to be allotted to him as aforesaid. Also one-fifth part of the remaining two-thirds of my share and portion in the said one by forty tract of land, hereinbefore designated as tract "B." Also, one-fifth part of the said residue of my share of the said six by forty arpent tract of land, hereinbefore designated as tract "A;" that is to say, first excepting the piece of ground thereof which I shall give to Bishop Kenrick, and the one-third of the remaining portion thereof which I have given to said trustee. Also, one-fifth part of the said residue of my share, in right of my father, not otherwise given or to be given, of the said Marine Railway tract. Also, one sixth part of the said residue of all my share of all the real and personal property whatsoever of which I am seized, possessed, or entitled to as child and heir of said John Mullanphy, (not otherwise given or to be given,) which, for further description, may be as follows: land divided and undivided, ordered and not ordered to be sold, and the proceeds of such sale, and my share of the Dubuque mines, to the use of him, the said Bryan Mullanphy, my brother, and his heirs forever.

179 I give and devise unto Mary Biddle, of Philadelphia, widow of John Biddle, of Philadelphia, in the State of Pennsylvania, all my ground, except the street before given, situate and bounded as follows: On the north by the said tract "B," on the east by said Seventh street, on the south by said Biddle street, and on the west by Eighth street, in the said city of St. Louis. Also, one of my said eight pieces of ground in that part of my three by forty arpent tract of land without the city of St. Louis, hereinbefore designated as tract "Z," to be allotted to her as aforesaid. Also, all my silver plate and my French silver dressing-case, to the following uses, to wit: as to the said parcels of land, to the use of her, the said Mary Biddle, for and during her lifetime, and from and after death to the use of her daughter, Anne—

Twelfth sheet of my will.—Ann Biddle.—Biddle, and her heirs forever; and as to the said plate and dressing case, to the use of her, the said Mary Biddle, and her heirs forever.

I give and devise unto Mary Vandevoort, now of the city of New York, daughter of the late Charles Biddle, and Ann, his , of the city of Philadelphia, wife of Peter Vandevoort, all my ground, except the street before given, situate and bounded as follows: On the north by said tract "B," on the east by said Eighth street, on the south by said Biddle street, and on the west by Ninth street, to the use of her, the said Mary Vandervoort, for and during her life, and from and after her death to the use of her own right heirs forever.

I give and devise unto Catherine Biddle, (another daughter of said Charles Biddle and Ann, his wife,) all my ground, except the street before given, situate and bounded as follows: On the north by said tract "B," on the east by Tenth street, on the south by said Biddle street, and on the west by Eleventh street, from which I, of course, except the lot given to Detheaux, Verhaagen, and Smedts, to the use of her, the said Catherine Biddle, for and during her life, and from and after her death to the use of her own right heirs forever.

I give and devise unto Hannah Biddle, another daughter of Charles Biddle and Ann, his wife, all my ground, except the street before given, situate and bounded as follows: On the north by said tract "B," on the east by said Eleventh street, on the south by said Biddle street, and on the west by Twelfth street, in the said city of St. Louis, to the use of her, the said Hannah Biddle, for and during her life, and from and after her death to the use of her right heirs forever.

I give and devise unto Elizabeth Biddle, another of the daughters of said Charles Biddle and Ann, his wife, all my ground, except said street before given, situate and bounded as follows: On the north by the said tract "B," on the east by said Twelfth street, on the south by said Biddle street, and on the west by Thirteenth street, in the said city of St. Louis, to the use of her, the said Elizabeth Biddle, for and during her life, and from and after death, to the use of her right heirs forever.

I give and devise unto Ann Leonard, another daughter of the
180 said Charles Biddle and Ann, his wife, (wife of Samuel Leonard,) late of Natchez, Mississippi, all my ground, except the street above given, situate and bounded as follows: On the north ; on the east by said Sixteenth street, on the south by said Biddle street, and on the west by said Seventeenth street, in the said city of St. Louis, to the use of her, the said Ann Leonard, for and during her life, and from and after her death to the use of her own right heirs forever.

I give and devise unto Lieutenant James Biddle all my ground, except the street before given, situated and bounded as follows: On the north by said tract "B," on the east by said Seventh street, on the south by said Biddle street, and on the west by said Eighteenth street; also one of my eight pieces of ground in that part of my three by forty arpent tract of land without the said city of St. Louis, hereinbefore designated as tract "Z;" to be allotted to him as aforesaid; the first described parcel of ground devised to said James Biddle, is situate in the—

Thirteenth sheet of my will.—Ann Biddle.—said city of St. Louis to the use of him, the said James Biddle, (son of said Charles Biddle and Ann, his wife,) and his heirs forever. I give and devise unto Thomas Biddle Hopkinson, of the city of Philadelphia, son of Francis Hopkinson and Ann Biddle, his wife, my two lots of ground, to wit: Lot number one, being twenty-six feet three inches, more or less, on Broadway, and about 114 feet deep to an alley, being about sixty feet wide on said alley; said lot of ground is in block number seventy-two west, in the said city of St. Louis; also, lot number three (3) being thirty-five feet two and a half inches on Second street, more or less, and about ninety

feet to an alley, in depth; said lot of ground is in block number seventy-two east, in the said city of St. Louis, to the use of him, the said Thomas B. Hopkinson, and to his heirs forever. I give and devise unto the said Louis G. Picot my two following described lots of ground, to wit: In block number (71) seventy-one west, in said city of St. Louis, lot number (1) one, being forty-four feet, more or less, on Collins street, and about two hundred and forty feet in depth, to Eglize's western boundary line; also, in block number two hundred and thirty-seven in the said city of St. Louis, and in the said Marine Railway tract, my piece or parcel of ground, being eighty-two (82) feet, more or less, on the Mississippi River, and about one hundred and forty-five feet, more or less, to an alley, to the use of him, the said Louis G. Picot, and his heirs forever. I give and devise unto Maria L. Kinney, of Belleville, in the State of Illinois, wife of William C. Kinney, my two following described lots of ground, to wit: In block number seventy-one, in the said city of St. Louis, lot number (1) one, being forty-six feet, more or less, on Collins street, and about one hundred and four feet on Carr street, to an alley; also, in the same block number seventy-one (71,) lot number (1) one, being fifty-two feet and a half, more or less, on Second street, and one hundred and sixteen feet, more or less, on Biddle street, to an alley, to the use of her, the said Maria L. Kinney, for and during her life, and after her death to the use of her own right heirs
181 forever. I give and devise unto Elizabeth Kane, of Kaskaskia, Illinois, daughter of the late Elias K. Kane and Felicete, his wife, my two following described lots of ground, to wit: in block number twenty-two (22,) in said city of St. Louis, lot number (3) three, being fifty-eight feet, more or less, on Second street, and one hundred and thirty-seven feet, more or less, to an alley, in depth; also in the same block, lot likewise number (3) three, being twenty feet, more or less, on Maine street or Jefferson street, and one hundred and forty-three feet and a half on Carr street, to an alley, to the use of her, the said Elizabeth Kane, for and during her life, and from and after death to the use of her own right heirs forever. I give and devise unto Mary H. Welsh my three following described lots of ground, to wit: in block number (70) seventy west, in the said city of St. Louis, lot number (1) one, being twenty-six and ½ feet, more or less, on Collins street, and one hundred and two feet, more or less, in depth; also, in block number (70) seventy east, in said city of St. Louis, lot likewise number one, (1,) being twenty-six feet and one-eight'—

Fourteenth sheet of my will.—Ann Biddle.—feet on Collins street, more or less, and one hundred and two feet, more or less, in depth, to an alley; also, in block number seventy two (72) east, in the said city of St. Louis, lot likewise number one, (1,) being twenty-eight feet, more or less, on said Collins street, and one hundred and eight feet, more or less, in depth, to an alley, to the use of her, the said Mary Welsh, for and during her life, to be enjoyed by her separate and apart from any husband she may hereafter have, and from and after her death to the use of her right heirs forever. I give and devise unto Bishop Peter Richard Kenrick, of the city of St. Louis, and his heirs forever, all my ground, (except the said street before mentioned,) bounded and situate as follows: On the north by said tract "B," on the east by said Ninth street, on the south by said Biddle street, and on the west by said Tenth street, in the said city of St. Louis; also, all my claim, and for and in respect of a certain debt, six thousand dollars ($6,000) due or payable to my said Bishop, as representative of Bishop Rosatti, his predecessor, together with the mortgage deed, or certain lien, executed by said Bishop Rosatti,

by which the said sum of six thousand dollars is secured to me, and all my right, title, and interest for and in respect of said mortgage deed or other lien; also, the sum of eight thousand dollars ($8,000) to be paid to him or them, by my executors or executor, as early as practicable after my death, to and for the uses, interests, and purposes, and with and subject to the powers and conditions hereinafter mentioned and expressed, of or concerning the same, (that is to say,) as to the said parcel of ground to the certain uses and purposes expressed and mentioned, and reserved for future direction in my deed of life for part thereof, executed March 23d, 1844, and recorded at St. Louis, in Book G, No. 3, page 385. In said deed the following described part, to wit, the northern portion of the said part therein granted, being eighty feet in breadth, front on said Tenth street, by one hundred and twenty-five feet in depth, more or less, to an alley, was specified to be for a site of a widow's asylum.

182 I now direct that on the same piece of ground, which by computation will touch the said street intended to be laid through said parcel of ground, (but if not, then include the intermediate space so as to be bounded on the north side by said street,) and in connection with said asylum for poor indigent widows, the' be erected a lying-in hospital, house of industry, or some charitable institution, having for it, or their object, the relief of poor or destitute women and children, and as to the remaining portion of the parcel of ground herein given, (exclu—

Fifteenth sheet of my will.—Ann Biddle.—sive of the part granted in said deed,) in trust to further and aid those purposes, in the manner following, (that is to say,) that the same shall not be claimed or mortgaged, nor in any way transferred or charged, but that it shall and may be lawful to, and for the said trustees, from time to time, to demise, lease, or grant the same, or any part thereof, to any person or persons whomsoever, for any term or number of years whatsoever, so as in every such demise, lease, or grant, there be reserved and made payable the best yearly rent that can reasonably be had or gotten for the premises comprised in such demise, leases, or grants, respectively, at the time of meeting the same, and so as in every such demise, lease, or grant, there be contained a proviso or condition of re-entry, in case the rents thereby reserved be behind and unpaid by the space of six months at the most. The rents, issues, and profits from the same, together with the principal and interest of the said mortgage, lien, or sum of six thousand dollars, shall be appropriated towards the erection and establishment of the said institution before mentioned, and for the support and maintenance of the same, and from and after the said institution shall be completed and finished, if any surplus of said sum of money or said income shall remain, then the said trustees from time to time may expend and lay out the same in erections, buildings, and tenements, on the said remaining portion of said parcel of ground, to be let out for rent, and the issues and profits of the same shall be apportioned as before. And if it shall so happen at any time, or times, that the income thereof, and the mortgage, if not redeemed, (according to my intentions,) shall exceed the reasonable wants of said institution, then said trustees shall from time to time, and at all times, distribute said surplus among poor and destitute women and children, as to them, the said trustees, shall seem meet: Provided always, that by and out of the said ground rents, house rents, and all said incomes, and I hereby charge the said parcel of ground therewith, the sealings, erections, and all other things hereafter to be directed to be erected and made to the memory of my said husband, and the burial ground between said widows' asylum and the orphans'

asylum, be from time to time, and at all times, kept with all and all manner of needful and proper preparations, cleanings, and amendments whatsoever.

And as to the said part of said parcel of ground granted in said deed, and reserved to such uses as I should in future direct, to wit:

Sixteenth sheet of my will.—Ann Biddle.—That piece beginning
183 at a point in the eastern line of said Tenth street, and 240 feet northward of the northern line of said Biddle street; thence northwardly along said Tenth street eighty feet; thence eastwardly 125 feet, more or less, to the alley; thence southwardly along said alley, eighty feet; thence westwardly 125 feet, more or less, to said Tenth street, and point of beginning, and bounded as follows: On the north by said Widows' Asylum lot, on the east by said alley, on the south by the Orphans' Asylum lot, and on the east by said Tenth street. I now direct that the same shall be consecrated and forever used for the burial place of the remains of my husband and myself, and for no other purpose whatsoever. And as to the said sum of eight thousand dollars ($8,000) above given to said trustees, it is in trust to be laid out and expended in removing the said remains of my husband and myself, and entering the same therein, and in enclosing the said eighty feet by one hundred and twenty-five feet lot with iron and other suitable materials, in building vault for said remains, and erecting a monument over the same, (our joint grave,) of the best material and finish; all of which I direct to be done as early as practicable after my death. I also give and devise to said Bishop Peter Richard Kenrick, and his heirs forever, my piece or parcel of ground situate in the said county of St. Louis, being part of my share of the said six by forty arpent tract of land hereinbefore designated as tract "A," and which is described by the commissioners in partition among the heirs of John Mullanphy, as follows: The lot or tract No. 1, being the third tract west of 18th street, bounded south by the southern boundary of the whole tract, eight chains and fifty links east by lot number seven, being parallel to Eighteenth street, seventeen chains and sixty links, more or less, to the northern boundary of the whole tract, eight chains and fifty links; and on the west by lot number two, seventeen chains and sixty links, more or less; upon trust, to found and establish upon the same forever a house of the order of the Ladies of Visitation of St. Mary, and on condition that the foundation of such an institution be commenced within five years after my death, and that the same shall be under the charge of that branch of said order now occupying my house in said block No. 556, of the city of St. Louis.

Seventeen' sheet of my will.—Ann Biddle.—I give and bequeath unto the said Elizabeth Kane, (daughter of the said Elias K. Kane and Felicite, his wife,) the sum of three hundred dollars, in addition to the former devise. I give and bequeath unto my god-daughter, Ann B. Kinney, (daughter of the said William C. Kinney and Maria L., his wife,) the sum of five hundred dollars, ($500.) I give and bequeath unto my god-son, Benjamin Payne, of St. Louis, (son of Thomas S. Payne,) my three slaves, to wit: William and his sister Louise, and her daughter, Amanda. I give and bequeath unto the Second Orphan Asylum, in the city of St. Louis, being the same incorporated by act approved February 13th, 1841, of which Angela Hughes and others were the members, the sum of three hundred dollars, ($300.) I give and bequeath
unto Mary Trainer, of the said city of St. Louis, (daughter of
184 Michael Trainer,) the sum of one hundred dollars, ($100.) I give

and bequeath unto Ernastine Karst, of said city of St. Louis, (now in the service of my sister, Mary Harney,) the sum of one hundred dollars, ($100.) I give and bequeath unto Mary, an Indian girl, now in my service, the sum of two hundred and fifty dollars, ($250.) I give and bequeath unto my said sister, Mary Harney, all my library, books, paintings, clothing, jewelry, and furniture of every description whatsoever, except the articles personally given herein to the said Mary Biddle of Philadelphia. Upon reviewing the preceding part of my will, I deem it proper to make the following explanations and additions, and if anything hereinbefore contained may be supposed to be inconsistent or repugnant with the following, then I declare such part or parts of the preceding to be thereby revoked and canceled, as if never written.

1st. I direct and will that all my debts and legacies shall be paid out of the following specified part or parts of my estate, and I hereby charge the same therewith, in the order named: First, by and out of my money and bank bills on hand, and rents, and monies due and payable to me, on open account, at the time of my death, and if not sufficient—Secondly, by and out of the personal property from my father, given herein to be equally divided into six parts among my said brothers and sisters, and the said Picot, in trust; and if not sufficient—Thirdly, by and out of my real estate from my father, given herein to be equally divided into six parts among my said brother and sisters, and the said Picot, in trust; and if not sufficient—Fourthly, by and out of my real estate, from my father, given herein to my said brother and sisters, and the—

Eighteenth sheet of my will.—Ann Biddle.—said Picot, in trust, of which one-third part is given to said trustee, and the remaining two-thirds to be divided into five parts among my said brother and sisters. 2d. The trust estate given herein, to the said John O'Fallon, is not intended to release any claim or claims I have, or may have, for the purchase money, or any part thereof, or any other demand against any of the purchasers, but simply and only for further assurance to the present owners of the lots of ground given, sold, or conveyed; among said purchasers and donees are the following named persons: Henry Menne Singleton, I. Hake, Edward Manning, assignee of Lewis Adie, John F. Darby, Gordon Robinson, John C. Abbott, Solomon A. Watts, Bishop Peter Richard Kenrick, Theodore De Theux, Peter J. Verhaagen, John B. Smedts, and if there be others who may be omitted in the above list, I intend they shall have the like benefit, as if named; and I direct that said trustees shall stand seized, subject to the above restriction, of the several parcels to their respective uses forever. 3rd. As to such parts of my real estate given me by my husband, the said Major Biddle, as I have sold and repurchased, or which has been reassigned to me, I will, and direct that the same shall go with the devise to said John Biddle, as aforesaid, subject to the incumbrances, if any, on the same. 4th. If in the devises of my three by forty arpent tract of land, it appears
185 that any part or parts thereof devised to the said city of St. Louis is afterwards devised to others, I hereby revoke all such part or parts of the latter devises, and declare the devises to the said city of St. Louis, for the purposes therein named, to be paramount. 5th. If, in this will, the devises and bequests of all "my residue," or other similar expressions appear to be inconsistent with the previous or after devises and bequests of particular parcels, or sums to other persons, I hereby revoke and annul each part or parts of such general devises and legacies, and declare, and will, that all and singular of the specific devises and legacies shall be paramount.

In witness whereof, I, Ann Biddle, have to this my will, consisting

of eighteen sheets of paper, set my hand at the top of each sheet of the same, and seal to this last sheet thereof.

[SEAL.] ANN BIDDLE.

January second, eighteen hundred and forty-five, signed, sealed, and published, and declared, by the above-named Ann Biddle, as and for her last will and testament, in the presence of us, who at her request and in her presence, have subscribed our names as witnesses thereto, this second day of January, in the year of our Lord eighteen hundred and forty-five.

WILLIAM MILBURN.
STEPHEN D. BARLOW.
GEO. E. BRICKETT.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this fourteenth day of January, in the year of our Lord one thousand eight hundred and forty-six, before me, Peter Ferguson, judge of probate of the court of St. Louis, in the State of Missouri, personally appeared George E. Brickett, one of the subscribing witnesses to the preceding instrument of writing, who, being by me duly sworn on his oath, saith, that he was present and saw Ann Biddle sign her name at the commencement of each sheet of the foregoing instrument, commencing with the first sheet and ending with the eighteenth; and also saw her subscribe her name to the conclusion thereof, and heard her publish, pronounce, and declare the same to be her last will and testament; that he, the said deponent, and William Milburn, and Stephen D. Barlow, the other subscribing witnesses, subscribed their names thereto, in the presence of the testatrix, and in the presence of each other as witnesses to the same, and that at and during said time, she, the said testatrix, was of sound and disposing mind, to the best of his knowledge of observation and belief. He further states that Stephen D. Barlow, one of the subscribing witnesses aforesaid, is not now in the State of Missouri, as he is informed and believes.

GEO. E. BRICKETT.

Sworn to and subscribed before me this fourteenth day of January, in the year one thousand eight hundred and forty-six.

PETER FERGUSON,
Judge of Probate.

186 STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this fourteenth day of January, in the year of our Lord one thousand eight hundred and forty-six, before me, Peter Ferguson, judge of the probate court of the county of St. Louis, personally appeared William Milburn, one of the subscribing witnesses to the foregoing instrument of writing, who, being by me duly sworn, on his oath saith, that he was present and saw Ann Biddle subscribe her name at the commencement of each sheet of the foregoing instrument, commenceing with the first sheet and ending with the eighteenth sheet, and also saw her subscribe her name to the conclusion of said will, and heard her publish, pronounce, and declare the same to be her last will and testament; that he, said deponent, and Stephen D. Barlow and George E. Breckett, the other subscribing witness, subscribed their names thereto, in the presence and at the request of the testatrix, and in the presence of each other, as witnesses to the same, and that at and during the time

and bequeath unto Ernastine Karst, of said city of St. Louis, (now in the service of my sister, Mary Harney,) the sum of one hundred dollars, ($100.) I give and bequeath unto Mary, an Indian girl, now in my service, the sum of two hundred and fifty dollars, ($250.) I give and bequeath unto my said sister, Mary Harney, all my library, books, paintings, clothing, jewelry, and furniture of every description whatsoever, except the articles personally given herein to the said Mary Biddle of Philadelphia. Upon reviewing the preceding part of my will, I deem it proper to make the following explanations and additions, and if anything hereinbefore contained may be supposed to be inconsistent or repugnant with the following, then I declare such part or parts of the preceding to be thereby revoked and canceled, as if never written.

1st. I direct and will that all my debts and legacies shall be paid out of the following specified part or parts of my estate, and I hereby charge the same therewith, in the order named: First, by and out of my money and bank bills on hand, and rents, and monies due and payable to me, on open account, at the time of my death, and if not sufficient—Secondly, by and out of the personal property from my father, given herein to be equally divided into six parts among my said brothers and sisters, and the said Picot, in trust; and if not sufficient—Thirdly, by and out of my real estate from my father, given herein to be equally divided into six parts among my said brother and sisters, and the said Picot, in trust; and if not sufficient—Fourthly, by and out of my real estate, from my father, given herein to my said brother and sisters, and the—

Eighteenth sheet of my will.—Ann Biddle.—said Picot, in trust, of which one-third part is given to said trustee, and the remaining two-thirds to be divided into five parts among my said brother and sisters. 2d. The trust estate given herein, to the said John O'Fallon, is not intended to release any claim or claims I have, or may have, for the purchase money, or any part thereof, or any other demand against any of the purchasers, but simply and only for further assurance to the present owners of the lots of ground given, sold, or conveyed; among said purchasers and donees are the following named persons: Henry Menne Singleton, I. Hake, Edward Manning, assignee of Lewis Adie, John F. Darby, Gordon Robinson, John C. Abbott, Solomon A. Watts, Bishop Peter Richard Kenrick, Theodore De Theux, Peter J. Verhaagen, John B. Smedts, and if there be others who may be omitted in the above list, I intend they shall have the like benefit, as if named; and I direct that said trustees shall stand seized, subject to the above restriction, of the several parcels to their respective uses forever. 3rd. As to such parts of my real estate given me by my husband, the said Major Biddle, as I have sold and repurchased, or which has been reassigned to me, I will, and direct that the same shall go with the devise to said John Biddle, as aforesaid, subject to the incumbrances, if any, on the same. 4th. If in the devises of my three by forty arpent tract of land, it appears
185 that any part or parts thereof devised to the said city of St. Louis is afterwards devised to others, I hereby revoke all such part or parts of the latter devises, and declare the devises to the said city of St. Louis, for the purposes therein named, to be paramount. 5th. If, in this will, the devises and bequests of all "my residue," or other similar expressions appear to be inconsistent with the previous or after devises and bequests of particular parcels, or sums to other persons, I hereby revoke and annul each part or parts of such general devises and legacies, and declare, and will, that all and singular of the specific devises and legacies shall be paramount.

In witness whereof, I, Ann Biddle, have to this my will, consisting

of eighteen sheets of paper, set my hand at the top of each sheet of the same, and seal to this last sheet thereof.

[SEAL.] ANN BIDDLE.

January second, eighteen hundred and forty-five, signed, sealed, and published, and declared, by the above-named Ann Biddle, as and for her last will and testament, in the presence of us, who at her request and in her presence, have subscribed our names as witnesses thereto, this second day of January, in the year of our Lord eighteen hundred and forty-five.

WILLIAM MILBURN.
STEPHEN D. BARLOW.
GEO. E. BRICKETT.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this fourteenth day of January, in the year of our Lord one thousand eight hundred and forty-six, before me, Peter Ferguson, judge of probate of the court of St. Louis, in the State of Missouri, personally appeared George E. Brickett, one of the subscribing witnesses to the preceding instrument of writing, who, being by me duly sworn on his oath, saith, that he was present and saw Ann Biddle sign her name at the commencement of each sheet of the foregoing instrument, commencing with the first sheet and ending with the eighteenth; and also saw her subscribe her name to the conclusion thereof, and heard her publish, pronounce, and declare the same to be her last will and testament; that he, the said deponent, and William Milburn, and Stephen D. Barlow, the other subscribing witnesses, subscribed their names thereto, in the presence of the testatrix, and in the presence of each other as witnesses to the same, and that at and during said time, she, the said testatrix, was of sound and disposing mind, to the best of his knowledge of observation and belief. He further states that Stephen D. Barlow, one of the subscribing witnesses aforesaid, is not now in the State of Missouri, as he is informed and believes.

GEO. E. BRICKETT.

Sworn to and subscribed before me this fourteenth day of January, in the year one thousand eight hundred and forty-six.

PETER FERGUSON,
Judge of Probate.

186 STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this fourteenth day of January, in the year of our Lord one thousand eight hundred and forty-six, before me, Peter Ferguson, judge of the probate court of the county of St. Louis, personally appeared William Milburn, one of the subscribing witnesses to the foregoing instrument of writing, who, being by me duly sworn, on his oath saith, that he was present and saw Ann Biddle subscribe her name at the commencement of each sheet of the foregoing instrument, commencing with the first sheet and ending with the eighteenth sheet, and also saw her subscribe her name to the conclusion of said will, and heard her publish, pronounce, and declare the same to be her last will and testament; that he, said deponent, and Stephen D. Barlow and George E. Breckett, the other subscribing witness, subscribed their names thereto, in the presence and at the request of the testatrix, and in the presence of each other, as witnesses to the same, and that at and during the time

she, the said testatrix, was of sound and disposing mind, to the best of his knowledge, observation, and belief.

WILLIAM MILBURN.

Sworn to and subscribed to before me, at St. Louis, this fourteenth day of January, in the year of our Lord one thousand eight hundred and forty-six.

PETER FERGUSON,
Judge of Probate.

On an examination of the depositions of George E. Brickett and William Milburn, subscribing witnesses aforesaid, I, Peter Ferguson, judge of probate of the county of St. Louis, in the State of Missouri, consider the preceding instrument, signed by Ann Biddle, to be duly proved to be the last will and testament of Ann Biddle, deceased.

In testimony whereof I have hereunto set my hand and affixed the seal of the probate court of the county of St. Louis, at office in said county, and in the State aforesaid, this fourteenth day of January, in the year of our Lord one thousand eight hundred and forty-six.

[L. S.] PETER FERGUSON,
Judge of Probate.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Peter Ferguson, judge of probate of the county of St. Louis, in the State of Missouri, certify that the foregoing is a true copy of the last will and testament of Ann Biddle, deceased, and of the probate thereof, as the same now remains of record in my office, in the record of letters and wills, Book C, page (198) one hundred and ninety-eight, and following.

In testimony whereof I hereto set my hand and affix the seal of the probate court of the county of St. Louis, at office in said county, 187 and in the State of Missouri, this twentieth day of February, in the year of our Lord one thousand eight hundred and forty-six.

[L. S.] PETER FERGUSON,
Judge of Probate.

Filed for record and recorded February 24, 1846.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of the last will of Ann Biddle, the probate thereof, certificate from the judge of probate, and the date of filing and recording, as the same remains of record in my office in Book Y^3, page 88, and following.

Witness my hand and official seal, this 23d day of September, 1865.

[L. S.] A. C. BERNOUDY, *Recorder.*

"L."

Testimony of Jacques Labbe.

Testimony of Jacques Labbe, Antoine Smith, Joseph Labarge, John B. Hortiz, as follows:

Testimony of Jacques Labbe:

Jacque Labbe, alias Moise, being sworn on behalf of defendants, says: I am 70 years old last August; I live at Cahokia, Ill's, and lived there

which were scattered all over the boat-yard, I consider that we purchased of them all the right that they had there. We took the whole affair from them, and got whatever possession they had.

Question. Did you not consider that you got whatever interest Hall, Allen & Childs had in the lease marked Exhibit C?

Answer. We surely had possession of all that Hall, Allen & Childs had under the lease marked Exhibit "C."

Question. Did Emerson or Magwire acquire or take possession of the lots in question by any right or claim under you as tenants of Chambers, knowing you to be such?

Answer. This is a difficult question for me to answer. Emerson & Magwire were there a long time after me.

Question. Did Emerson or Magwire take possession through or under you, knowing you to be the tenant of Chambers?

Answer. When I left there I sold out what I had to Emerson.

Question. Did Emerson, when he took possession of you, know that you were a tenant of Chambers?

Answer. Emerson knew that we leased the mill lot of Chambers, certainly.

Question. Did you, at the time you surrendered possession, or when you were bargaining for the sale, tell him that you held the mill lots, and the other lots on which the logs were, as tenants-at-will of Chambers?

Answer. I don't know that I told him anything about the lease "C" at the time I sold to him. Mr. Emerson had occupied the lots with me for a year, and knew how I held them.

Question. You have stated that you purchased out Lewis's houses, in block No. 1, at $500. Was the purchase made with your own money, or with that of another person; and if with the money of another person, who was that person?

Answer. I paid Lewis the money.

Question. From whom did you get the money?

(Objected to by Magwire.)

207 Answer. It is pretty hard to tell. I was receiving from $50,000 to $60,000 a year then.

Question. Did you get it from Magwire or not?

(Objected to by Magwire.)

Answer. That's pretty hard to say, too. I got a great deal of money from Mr. Magwire at that time. I got most of my money for boat-building, &c., through him at this time.

Question. Did you not account to Magwire for the money you received from him on account of boat-building?

(Objected to by Magwire.)

Answer. We did account to him for it.

Question. Did you ever account to or give to Magwire any receipt for the $500 paid to Lewis?

Answer. I don't know where the identical $500 paid to Lewis came from. If I got it from Magwire, I gave him, probably, a receipt for it.

Did not you and Mr. Magwire have frequent conversations as to purchasing out Lewis, and did not Magwire furnish you with $500 for this purpose?

Answer. Mr. Magwire and I often talked about that and our other business. I think that there was about $500 not credited to Mr. Magwire, which we paid to Lewis in that arrangement.

Question. Did you not pay out other money to buy out other tenants of Chambers in block No. 1?

Answer. I bought at auction a shed that old Mr. Stoneking put up there. I paid a Dutchman there twenty-five dollars to move out of his house. I also gave an old Dutchwoman ten dollars for the house she occupied then.

Question. Were their tenements situate in different parts of the block, and were they the only tenements on this block that you at any time purchased?

Answer. They were on different parts of the land; they and Lewis's tenements were the only ones that I remember that I purchased.

Question. Were there any on the block which you did not purchase?

Answer. There was an old log-house.

Question. By whom was that log-house occupied at the time you made the purchases?

Answer. I don't know. I think that Lewis professed to have the management of it.

Question. From whom did you get the money to purchase out these last-mentioned tenants?

Answer. This is hard to tell, as I was receiving a good deal of money at that time. I kept a memorandum of the money that I spent in that way, with the understanding that Mr. Magwire was to refund it to me. I never credited it to him.

Question. Did Magwire pay that money back to you, or not?

Answer. I received that money from him, and never credited him with it.

208 Question. Was it understood, or not, between Magwire and yourself, that you were never to pay back to him the money so received by you?

Answer. I so understood it.

Question. Did Magwire make a lease to you for a house of his on the corner of 9th and Chambers street for six months, for which you paid no rent, with the understanding that you were to lease to John Lewis said house free of rent as part consideration of the purchase of said Lewis's lease as aforesaid; or did you not?

(Objected to by Magwire.)

Answer. I believe I had a lease from Magwire for a house up there, into which Lewis moved when he left those houses. I never collected or paid any rent for it, but I don't remember the lease now.

Question. Did you have a lease for any house in the neighborhood of 9th and Chambers street from Maguire? If so, what were the terms of that lease, and with what understanding was the lease made?

Answer. I don't remember the terms of the lease, as I have not seen it for several years. I don't know whether there was any consideration or not. I never paid Magwire anything for it, nor did Lewis pay me anything. I believe that I leased it to Lewis with the understanding that he was to pay nothing for it.

Question. Were you, or were you not, ever told by any on' that they had an interest in the four by four arpents of land in controversy, claimed by Magwire, upon a part of which your saw-mill, in lot No. 3, was erected; and if so, what were you told?

(Objected to by Magwire.)

Answer. Yes. I have been told by a good many people that forty persons or more had an interest in it; Christy & Wright, and Chambers, and Labeaume, &c.

Question. Did any one else than the persons above named have an interest there? If so, name them.

(Objected by Magwire.)

Answer. Mrs. Dean, Benjamin Jennings. There was a Mr. Bell living there. I don't know whether he claimed the land or not; a man up there, a preacher, I believe, I don't know his name, told me that he owned two brick houses on it. Templeton was his name.

Question. Did Martin Thomas ever tell you that he had an interest up there?

(Objected to by Magwire.)

Answer. He once told me he had an interest in the claim.

Question. Do you remember whether any one else ever told you that they had an interest in that tract than those mentioned in the answers to the questions immediately preceding the last one?

(Objected by Magwire.)

Answer. Of course, I heard Mr. Magwire, Mr. Chambers, and Mr. Martin Thomas claimed an interest in the land.

209 Question. What interest did Martin Thomas claim in the land in controversy, and how did he claim it?

(Objected to by Magwire.)

Answer. I don't remember; a third, or fourth, or some other part of it.

Question. Did Thomas claim to hold his interest as partner of any one?

(Objected to by Magwire.)

Answer. He told me that he held an interest in the claim that they were establishing there.

Question. The claim that who was establishing there?

Answer. Mr. Magwire and others. I never understood it through Mr. Magwire, but through Thomas. Magwire has often told me that Thomas had an interest there.

(The further taking of these depositions is adjourned until to-morrow morning at 10 o'clock.)

M. S. CERRE, *Clerk.*

FRIDAY, *Sept.* 12*th*, 1851.

Pursuant to adjournment, I resumed the taking of the depositions at the place and hour above named. The examination of the said deponent, Joshua J. Childs, being resumed on the part of the petitioner, he says as follows:

Question. While you were the tenant of William Chambers in the saw-mill, and other lots heretofore mentioned, did you attorne to any other persons as landlord of said premises of Chambers, without Chambers's consent?

Answer. I don't know that I did.

Question. What acts did you on the premises with Magwire?

Answer. I never paid him any rent for anything there.

Question. Did you pay Chambers anything for said lots?

Answer. Hall, Allen, & Childs paid him rent for them.

Question. Did Magwire get into possession then? If yes, how?

Answer. Magwire never professed to have actual charge there while I was there. What happened afterwards I don't know.

Question. Did you know whether Mr. Magwire procured any of the tenants of Chambers to treat him as landlord instead of Chambers?

Answer. I don't know that Magwire collected any rent there. He told me that he owned the land. I think he leased some of the houses there to other people. I do not remember that he offered to lease any of the premises to me. He told me that we, Emerson & Childs, should

have a lease of the lands that we were occupying then under Chambers and others.

Question. Did you ever take any lease from Magwire, or recognize him as the landlord, or attone to him for those premises?

Answer. I never took any lease from him, and never paid any rent for those premises. I don't know that I, in any case, recognized him as landlord there. I thought that the property was his from his representations to me.

210 Question. Do you know anything further in regard to this matter material to the controversy, and pertinent to the matters about which you have been examined?

Answer. I don't remember anything further now pertinent to this matter. I don't know what is pertinent to the matter now; that what I have already testified is pertinent to it.

The examination on the part of the petitioners being closed for the present, the said deponent being cross-examined on the part of Magwire, deposeth and says as follows, to wit:

Cross-examination:

Question. At the time that Hall, Allen, & Childs took a lease from Chambers, did you occupy any ground there except what was embraced in the lease?

Answer. There are two leases. When we took the first one we occupied no ground at all; under the second lease we occupied little or no ground, except the mill-lot. Brotherton & Judson occupied all the rest of the ground up to the mill, with their logs, &c.

Question. Did you build your office and ox stable on the ground that Chambers leased to you?

Answer. I don't think that either of them stood on Chambers's ground, as described in the second lease.

Question. Did you know of any streets or lots there at the time you went there?

Answer. I had seen a plat of the ground in which the streets were laid down, but I did not know where they ran, except lot No. 3, which was measured off to us.

Question. Were any other lots ever measured off to you?

Answer. No.

Question. Was rent ever demanded by Chambers, or his agent, for any other lot, except the mill, of you?

Answer. I think the second lease was made at will for one dollar; I guess that is all that ever was paid, and I don't know that that was paid. The lease says it was paid.

Question. At the time you formed the partnership with Emerson, did you not know that he, Emerson, had a lease from Magwire for the ground on block 228, south of where the mill stood, and for the other vacant ground there?

Answer. At the time that Emerson and I agreed to go into partnership, I don't know that he had a lease then. I know he had a lease afterwards. If he had a lease at that time, I did not know it. Lewis was living there at that time. I bought him out.

Question. What did you buy from Lewis?

Answer. I bought the house that he had there.

Question. Did Lewis tell you that they belonged to him?

(Objected to by petitioners as irrelevant.)

Answer. He did.

Question. Did you take a bill of sale of Lewis?

Answer. I did.

211 Question. Is Exhibit "J," hereto annexed, that bill of sale?

Answer. I think it is.

Question. Did you have any conversation with William Chambers, or any of his agents, about the purchase of Lewis's houses, as to who owned them?

(Objected to by petitioners as irrelevant.)

Answer. I talked to Mr. Sturgeon once about purchasing out Lewis. He did not object to my purchasing the houses.

Question. Do you know of any tenants moving into houses on block No. 288, under a lease from Magwire; and if so, when did they move in?

Answer. There were several tenants in there who took leases from Magwire; I think that they took leases from Martin Thomas first.

Question. When were these leases made?

Answer. In the summer or fall of eighteen hundred and forty-six, I think.

Question. Did you ever see those leases, or any of them?

Answer. I believe that I have seen them.

Question. Where were the tenements situated?

Answer. All over the block, east of Main street; block No. 288, according to the city maps.

Question. At the time those tenants, under the leases made by Magwire, moved into the tenements on block No. 288, were those tenements occupied or vacant?

(Objected to by petitioners as assuming a fact not proved.)

Answer. I cannot say.

Question. Do you know who moved into the old log-house on block No. 288?

Answer. I think a man named Gibson moved into it.

Question. Was it vacant or occupied when he moved into it?

Answer. I think it was vacant. I don't think that there was anybody a tenant with him.

Question. Do you know whether John Ingram moved into a house on block No. 288, under lease from John Magwire?

Answer. I think that Ingram had a lease from Magwire; whether he had it when he moved into the house, or got it afterwards, I don't know.

Question. Do you not know that that house was vacant when Ingram moved in? I refer to the frame house between the log house and the river.

Answer. I think that it was vacant.

Question. How long did Ingram live in that house?

Answer. I don't recollect; I suppose he was there a month or two, until about the time it was pulled down.

Question. Had you, or Hall, Allen, & Childs, ever an' possession of those houses under his agents?

Answer. No.

Question. Do you not know that Emerson went there and erected

212 a boat-yard on block No. 288, and occupied the ground west of Main street, under a lease from Magwire?

(Objected to by petitioners, on the ground that the lease is not exhibited.)

Answer. I have seen a lease from Magwire to Emerson.

Question. Do you not know that Magwire at that time claimed to be the owner of the land? And how did you get that information?

Answer. I know that he claimed it. He told me, and others told me; Todd and Krum told me so. I think that Mr. Gamble told me that he

thought Magwire's title to the land was good. Martin Thomas told me so, and fifty others.

Question. Did Chambers or his agents ever demand any rent from you, after you and Emerson went into partnership there in boat-building, and how often?

Answer. I think so; I don't know how often. They generally called for the rent when it was due.

Did they not refuse to receive rent from you?

Answer. They did; I tendered Sturgeon rent once; he didn't take it.

Question. Why did he not take it?

Answer. There was some hard feeling at the time, and he thought that we had forfeited the lease, and he wished to consult counsel.

Question. Did he ever call on you after for rent?

Answer. Yes.

Question. While you and Emerson were carrying on the business of boat-building, were any attempts made to take forcible possession of the ground occupied? If so, how much of it?

Answer. There was fencing enough done there to fence in a small farm.

Question. Who built those fences and superintended the building of them?

Answer. Isaac H. Sturgeon, Howard J. Christy, and Judge Schaumburg, and after they were done, Labeaume fenced up the balance.

Question. Were those fences put up with or against the consent of Emerson and yourself?

Answer. Against our consent.

Question. Did you and Emerson and the foreman in the yard, resist the putting up of the fences?

Answer. We forbade them to put up those fences.

Question. How many men were engaged in putting up those fences?

Answer. From twenty five to forty.

Question. Were they armed?

Answer. I saw no arms except the tools.

Question. Did you hear any of them say that they had arms?

Answer. I don't know that I ever did. I heard that they had arms.

Question. Did they remove any of the lumber of the yard, and how?

213. They threw it into the street, and so as to get it out of the way of their fences.

Question. Was your business and men stopped by reason of the fencing?

Answer. It interfered considerably with our operations. In fencing around the lots, one or two at a time, they stopped up our roads to the mill, so that it was difficult to get our timber-wheels along. There was also so much excitement up there that our men could do no work for several days.

Question. Was a number of men kept there on guard; if so, how many?

Answer. There were many men there for some time; some employed by the litigants on the other side; and some of the city police were stationed there.

Question. What was the conduct of those men?

Answer. There were two or three fights there between these men. Rawlings whipped one of our men. There were threats and re-threats between Sturgeon and his party, who were keeping up the fences. Sturgeon and I had a cursing match through a fence once. Magwire

and I went for the police. The mayor said he would send an officer up there. Bryan Mullanphy was mayor then; he sent the police up there. I wasn't there at the time they got there. I understood that they interfered, to prevent Emerson from pulling down the fence; I did not see this, however. The fences prevented our operations, by stopping our our roads to the mill. We had a bridge across a slough or gully, and they fenced in the road that led to this bridge, so that we could not get our logs across to the mill. The fences interfered in many ways with the hauling of the timber around there, and we could not get the timbers to the mill or away from it, so that it was stopped two or three days. We had previously worked day and night; had to work then only by day.

Question. Had you contracts then on hand for building steamboats; if so, how many?

Answer. We had two boats on the stocks at the time.

Question. Did the fencing and other operations of that party interfere with the building of those boats? How?

Answer. It did; they so fenced up the ground that the hands could not get to work.

Question. Were you put to any great expense to get lumber for the building of those boats? If so, state how much, and in what way.

Answer. We had to buy other lumber, instead of cutting it with our own mill; and we were retarded in the working by the putting up of the fences there.

Question. What was the difference between the cost of what you cut for yourselves and that which you bought?

Answer. I can't say; it cost us about double what it would have cost us to cut it.

Question. After this fencing went up, did you have to stop working at night in consequence of this fencing?

214 Answer. Yes.

Question. Do you know that any attempts were made to drive the men from the mill, and to get possession of it by force?

(Objected to, as asking what the witness had heard of by others, by petitioners.)

Did the watchman tell you so?

Answer. I do not know it of my own knowledge; I heard that they had some difficulty there at night. I didn't know that they attempted to get possession of the mill.

Question. Do you know whether there was an attempt to fire the mill?

Question. Do you not remember to have told Magwire one morning that the mill had been fired back of the engine-room?

Answer. If such was the case, I do not remember it now.

Question. Do you know whether the mill was burnt down?

Answer. I don't know that it was burnt down; I wasn't in St. Louis at the time.

Question. Had you any conversation, or did you talk with any one, about the rebuilding of the mill; if so, with whom?

Answer. I talked with Mr. Magwire about it; I offered him $1,500 for the wreck, with the privilege of rebuilding it where it was, and for the use of the property.

Question. Why was not the negotiation between yourself and Magwire as to the rebuilding of the mill carried out?

Answer. The land around was all fenced up, and I found that there was no possibility of getting the ground.

Question. Do you know what became of the engine, boiler, and iron?

Answer. I hauled them away.

Question. Did you buy them of any one; if so, of whom?

Answer. I applied to Mr. Magwire for them, and was told by him that Mr. Sturgeon had taken possession of them, and that he would have nothing more to do with them. I then applied to J. H. Sturgeon; he told me that I must go to Rawlings for them, as he had them in his possession. I went then to Rawlings, and conversed with him; about what was said, I don't remember; but I went and took the things away, with the understanding, and, as I thought, by the consent of all parties, that, when called on, I was to pay for the things whatever they were worth.

Question. At the time you applied to Magwire for them, was the lot on which the mill stood fenced up?

Answer. It and all the other lots on the block were fenced up.

Question. Before that fence was put up there, did you have the conversation with Magwire about rebuilding the mill?

Answer. I don't know, but think not.

Question. Did you have any talk with Sturgeon about rebuilding the mill?

Answer. I think that I did tell Mr. Sturgeon that I had offered to Magwire for the privilege of rebuilding the mill.

215 Question. Did Sturgeon object to its being rebuilt on the same site?

Answer. I think that he told me that he intended to keep it in his own possession. I believe that he told me that he had leased the land. I understood from him that he would not make any agreement with me as to rebuilding the mill.

Question. Did he tell you that he intended to keep possession of it by force?

Answer. I did not understand him to say that he would keep it by force or peaceably, but simply that he intended to keep possession.

Question. How long were you in partnership with Emerson?

Answer. A little over a year.

Question. At the time you dissolved with Emerson, did he assume the debts of the firm?

Answer. He did.

Question. Did he assume the account between Magwire and Emerson and Childs, as it was?

Answer. He did.

Question. Do you know the situation of that account?

Answer. Not unless I had it.

Question. Examine Exhibit "K," and see whether you can answer the last question.

Answer. This paper is not in my handwriting. I have no doubt that it is what it purports to be, a correct copy of the account above referred to; but I could not swear to it, as I have not compared it with the books.

Question. When you left there did Emerson assume the account of Emerson & Childs with Magwire?

Answer. He did.

Question. Examine Exhibit "K," and see whether the $500 paid by you to John Lewis is not embraced in that account.

Answer. I cannot say that it is.

Question. Don't you know that the $500 charged on the 2d or 9th of October is the $500 paid to Lewis?

Answer. I do not know that either of them is.

Question. Do you know whether or not there was a large balance due Magwire which Emerson assumed?

Answer. I know that there was a balance due to Magwire which Emerson assumed. I don't know how much it was, the account had never been closed.

Question. Do you know whether Emerson accounted to Magwire for the $500 you paid to Lewis?

Answer. I do not.

Question. You stated that John Inghram, H. B. Gibson, and some other persons, went in there under leases from Magwire. Examine Exhibits L, M, and N, hereto annexed, and state whether those are the leases?

Answer. They appear to be so.

216 Question. When you sold to Emerson, did transfer any lease to him?

Answer. I don't remember what was in the articles of sale. I don't think that any lease was in it. I just gave up to him all that I had there and left.

Question. Did Emerson ever recognize Chambers as his landlord?

Answer. That I don't know.

Question. So far as you do know, did he ever, while you were there, recognize him as such?

Answer. I don't know that Emerson did. I don't know that Emerson did any act by which to recognize Chambers as landlord. I tendered them rent for Emerson and Childs, and everything I did was for the firm.

Question. At the time you tendered that rent, do you not know that Emerson had a lease from Magwire?

(Objected to by petitioners unless the lease is produced.)

Answer. I have seen a lease from Emerson to Magwire.

Question. Do you not know that Emerson recognized Magwire, and no one else, as his landlord?

(Objected to by petitioners as indefinite.)

Answer. I know that Emerson had a lease from Magwire in which was embraced all the land we occupied there. I can't say that he recognized no one else as landlord. He may have recognized everybody in town as such; we both thought that Magwire owned the land.

Question. If he had recognized any else as landlord, would you have been likely to know it?

Answer. If he had done anything of that kind it would have probably come to my ears. I managed the business generally. He attended at the boat-yard. I don't remember any business transaction he had.

Question. Did you ever see him do any act or hear him say anything which recognized any other landlord than Magwire?

Answer. I don't think that I did.

Question. Do you know when Emerson moved away from there?

Answer. I do not know when he left, but I know that he has removed away from there.

Question. Who occupied the property after he left?

Answer. I have seen Carlisle and Johnson there.

Question. When did you see them there?

Answer. In 1848 and 1849, I think.

Question. Under whom did they hold possession?

(Objected to as hearsay by petitioners.)

Answer. I think that Kayser told me that they held under Magwire.

Question. How long did they continue in possession of that property?

Answer. A year or more, I think. I think that they were there up to the time that the mill was burned down.

217 (The cross-examination on the part of Magwire is here closed. By consent of said petitioners and John Magwire, the further taking of these depositions is adjourned till Monday morning next, 15th September, 1851, at 10 o'clock.)

Pursuant to adjournment, I resumed the taking of these depositions, and the said Joshua L. Childs being re-examined on the part of the petitioner, says:

Question. Do you know where Webster street was?

Answer. Yes. It was from the Mississippi westwardly, and is north of and adjoining the mill lot.

Question. Do you recollect of paying Hoyt, as agent of Chambers, $1, or any other sum, for the lease of the vacant lots to put lumber on, or for any other purpose?

Answer. The lease says that the dollar was paid. So long a time has elapsed that it is difficult to remember it was paid or not; I suppose it was paid.

Question. You have no doubt, I suppose, that you held those vacant lots as tenants of Chambers?

Answer. I only held two of them, as already stated, and I have already said how that was arranged between Brotherton and myself.

Question. Was the ground in block 288 vacant when you and Emerson formed a co-partnership?

Answer. No.

Question. Was not Lewis's lot vacant?

Answer. It was not; the tenants were changing, however, all the time nearly.

Question. Did you not get Lewis's written lease to him, and if so, by whose direction?

(Objected to by Magwire.)

Answer. I returned it to him; I think that it was done at Mr. Magwire's request, though I am not certain that he told me so.

Question. Did you know, at the time you had that lease, whom it was from?

Answer. Yes; it was from Col. Chambers.

Question. Did Mr. Magwire, at any time prior to its being returned, know from whom it was?

(Objected to by Magwire.)

Answer. I think he did, though I do not know that he ever read the lease.

Question. Have you any doubt at all that Magwire knew that Lewis Peltre and others were at that time tenants of Chambers?

(Objected by Magwire.)

Answer. I think that Mr. Magwire knew that Chambers claimed the land, and that these men were his tenants.

Question. Do you act as agent or friend of Mr. Magwire in attempting to get possession of the houses and premises in block 288, from the tenants of Chambers?

(Objected to by Magwire.)

Answer. I helped to get some leases there to Thomas; Thomas came there to see me, and I advised the men to sign the leases; I
218 advised the men to sign three leases that Mr. Magwire has exhibited here; I did this at Magwire's request.

Question. Did Magwire consult with you as to the best way of getting possession of the premises there from Chamber's tenants?

(Objected to by Magwire.)

Answer. Mr. Magwire used to talk to me about getting possession of the land.

Question. Did you and he advise at getting possession of the different houses?

(Objected to by Magwire.)

Answer. He often talked to me about the property.

Question. Did he come to the conclusion that it was better to wait until Col. Chambers should go to Kentucky before pouncing upon the property?

Answer. I do not remember that Col. Chambers was here at the time Mr. Magwire got possession of the houses.

Question. At the time Mr. Magwire was talking to you about the best way of getting possession from Chambers's tenants, of the houses and lots, did you not inquire of Sturgeon in regard to buying out Lewis's lease, and make proposals for that purpose?

(Objected to by Magwire.)

Answer. I have already that I applied to Sturgeon to purchase Lewis off, and Sturgeon to give a lease for Colonel Chambers; this was subsequent to Magwire's claiming the land.

Question. Was that proposition for the purchase of Lewis's place made at Magwire's request, or not?

(Objected to by Magwire.)

Answer. I don't know that Mr. Magwire requested me directly to purchase it; I consulted with him about it.

Question. Did the tenants of Chambers, in the houses on block No. 288, receive leases from Magwire for the houses they were then living in, or did they change about from one house to another on the same block and receive leases for the houses into which they changed, or in what manner did thay get the leases?

(Objected to Magwire.)

Answer. One Inghram moved fron one house to another on the same block, and took his lease for the house he moved into; the old women received, I think, a lease for the house in which she was at the time.

Question. Was the lumber that was removed by Sturgeon, &c., on the east or west side of Main street?

Answer. On the west side of Main street.

Question. Did Sturgeon and others, before removing it, propose to remove it where ever Emerson & Childs might desire?

(Objected to by Magwire.)

Answer. I do not remember; they appeared very accommodating, [ironical;] I think Mr. turgeon did ask me once where I wished to have the lumber removed.

Question. Were you compelled to stop the mill because of the fencing?

219 Answer. Yes; I couldn't get logs to it.

Question. Did Mr. Magwire tell you why he kept away, and left you and your men to do the fighting?

(Objected to by Mr. Magwire.)

Answer. I don't know that Mr. Magwire kept away; he was there at times; Mr. Magwire has stated to me that he thought they would like to kill him.

Question. What would you have given for the wrecks of the mill after the fire, without the use of the property west of Main street?

(Objected to by Magwire.)

Answer. I would not have rebuilt the mill there. I would have

thought that from $300 to $500 the worth of the wreck, if it had to be removed; I consider the location and the use of the ground worth four times as much as the wreck.

Question. When you tendered the money for the rent of the mill lot to Sturgeon, was it done under the advice of Mr. Magwire?

(Objected to by Mr. Magwire.)

Answer. I think that Mr. Magwire advised me to do so.

Question. Did Emerson have at the time a lease from Magwire for the same mill lot?

Answer. I don't know that Emerson had a lease for that mill lot; I don't remember that the lease from Magwire to Emerson took in the mill lot.

The petitioners here closed their examination.

The cross-examination by Magwire was made as follows, to wit:

Question. Do you know whether Ingram and Gibson were ever tenants of Chambers?

Answer. I do not.

Question. At the time you bought out John Lewis, did you take any assignment of any lease from him?

Answer. No.

Question. Did Chambers, or his agents, claim, in their conversations about the purchase from Lewis, the buildings you bought from Lewis, or any interest in them?

Answer. I think not.

Question. Did Chambers, or his agent, ever demand any rent from you for the lot on which the mill stood after the time they told you the lease was forfeited?

Answer. After the time that we tendered the rent to Sturgeon, I met him once on Broadway, and the told me that he concluded to accept the rent.

Question. What reason did he give for not accepting it?

Answer. He said that the lease was forfeited.

Question. What was the amount of damages sustained by Emerson & Childs by reason of the boat-yard being fenced, and their timber being hauled off?

(Objected to by petitioners, because it does not arise out of the examination, and because witness is a party to the record.)

Answer. I think we suffered very materially, to the amount of
220 from $3,000 to $5,000; I do not recollect the precise amount of damages, though I once made a memorandum of them; it broke up our business.

Question. Did you ever hear any one who was engaged in fencing the boat-yard say whether there was an arrangement by the same persons, that certain persons should be shot down if resistance should be made?

(Objected to as heresay by petitioner.)

Answer. I never heard it directly from the parties, but I have heard that there was such an arrangement made; from whom I heard it, I don't know. And further, this deponent saith not.

J. J. CHILDS.

"N."

Testimony of Edward Tanner, Adolph Renard, and Wilson Primm, as follows:

Testimony of E. Tanner.

Edward Tanner, sworn on behalf of defendants, says: I have lived in

St. Louis seventeen years; knew Mr. Christy, but not well; I knew Col. Chambers; was his agent in collecting rents in eighteen hundred and thirty-nine, when he left, till his return, and occasionally before that, in eighteen hundred and fifty-eight; he furnished me a rent-roll; I know Labeaume's ditch, and property north of it; collected rents of Walters, Probst, and Lewis; their houses were below Main street, and north of the ditch, and south of Webster street; sometimes I went to the houses to collect rent; Walters' house was below the old brewery, and east of Main street; was an old house in eighteen hundred and thirty-eight; had been standing a long time; Probst's house was about half way down the bank on the river, east of Main street, and a little further up than Walters'; it was an old house; Probst repaired it some; Lewis's house was east of Main street and north of Walters'; Lewis built that; these parties held under written leases; have seen them; they were for a term of five years, and may have been renewable; Walters' and Lewis's were for five years; at that time no house west of Main street; Col. Chambers, in 1842 or '3, built a house west of Main street; I paid taxes for Chambers; paid taxes in 1839 and '40 on his north St. Louis property, but can't say that this property was included. Chambers claimed land west of Main street; I saw him showing lots west of Main street as belonging to him.

Cross-examination:

Walters' and Probst's houses were on the same range and same distance from the ditch; the old brewery was near the line south of the ditch, and these houses were about one hundred and fifty feet from the brewery; Walters had an enclosure about his slaughter-house, about in size forty or fifty feet by twenty or thirty feet; I had the leases from Mr. Chambers of Lewis and Walters; can't say that I had Powell's lease; Probst kept a grocery; I never knew Lapsley there.

221 *Testimony of A. Renard.*

Testimony of Adolph Renard:

Adolph Renard, sworn on behalf of defendants, says: I am United States recorder of land titles in the city of St. Louis, (witness produces U. S. patent No. 3, 3332.) This patent came into my hands from the Commissioner of the General Land Office. (Witness produces Livre Terrien, No. 5.) Page 10 is the commencement of the grant to Esther; this book purports to contain grants from Don Zenon Trudeau, governor of Upper Louisiana. (Witness is shown papers purporting to be copies of patent certificates No. 1249 and 1250.) These are copies of the patent certificates to Labeaume and Brazeau; I was recorder of land titles at that time.

Cross-examined:

There are six books of Livre Terrien. I have been recorder since eighteen hundred and forty-seven. Before that, for ten years, I had been employed in the surveyor general's office—since eighteen hundred and thirty-seven. The French language is my mother tongue, but can read Spanish. There are in the office many original petitions; on the backs of these petitions are the numbers and pages of the books in which they are recorded. I have seen the signature of Governor Trudeau proved; M. P. Leduc and Pascal Cerre used to prove it. It is believed that the whole of the record of the Esther grant, except the signature, are in the handwriting of Mr. Clamorgan. Some of them are in the handwriting of Soulard, and some of Governor Tradeau himself, and

some of a Mr. Bonner, as is believed. The flourish in the margin is the handwriting of Mr. Gratiot.

(Original concession to Esther shown witness.)

The body of this paper is in the handwriting of Mr. Clamorgan; the signature of Gov. Trudeau I believe to be genuine. When I speak of Clamorgan, I mean Jacques Clamorgan. The writing on the margin of the Esther grant, in Livre Terrien, I believe to be also in the handwriting of Jacque Clamorgan. I am not a practical surveyor and never have been. The Livre Terrien came into the office of the recorder of land titles in eighteen hundred and six, before they were kept by the governor. The translation of the Esther grant, signed by me, was made by me. The patent No. 3332 was sent to me by the Commissioner of the General Land Office for the legal representatives of Brazeau, and has been in my possession ever since, and is now. Mr. Hill once claimed it for the legal representatives of Brazeau, but I declined to give it him, not being certain that he was entitled to receive it.

Testimony of Wilson Primm.

Testimony of Wilson Primm:

Wilson Primm, sworn on behalf of defendants, says: (Witness is shown a paper, marked Exhibit 23, purporting to be a copy of letter from
222 P. Chouteau to Commissioner of General Land Office.) I know the signature of P. Chouteau, sr.; this is an exact copy made by me of a letter which I found in the office of the Commissioner of the General Land Office, at Washington. The signature was the genuine signature of P. Chouteau, sr. The body of the letter is in the handwriting of Rene Paul; P. Chouteau didn't understand English very well; Rene Paul understood both English, French, and Spanish. I copied it letter for letter, and point for point.

"O."

Patent certificate No. 1250, and patent certificate No. 1249, as follows:

Patent certificate No. 1250.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 26 *Feb'y*, 1852.

It is hereby certified that on the twenty-second of September, eighteen hundred and ten, the board of commissioners appointed in pursuance of the fifth section of the act of Congress approved the second of March, 1805, entitled "An act for ascertaining and adjusting the claims to lands in the Territory of Orleans and district of Louisiana," confirmed to Joseph Brazeau four arpents of land, situate about three miles north of the town of St. Louis, and that on the 14th of June, eighteen hundred and eleven, they issued their patent certificate No. 983, for that confirmation, as per the fourth section of the act of Congress of the 3d of March, eighteen hundred and seven, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana." It is further certified, that from a careful examination of the record, it is the opinion of this office that the four arpents of this confirmation were intended to mean four arpents front, along the Mississippi River, by four arpents in depth, towards the west, or sixteen superficial arpents. It is further certified that the same has been surveyed in strict conformity with the decision of the Hon. A. H. H. Stuart, Secretary of the Department of the Interior, on the 25th

of July, 1851, as appears from the accompanying plat and transcript of survey No. 3332, authenticated and returned on this day to this office, by Mr. Lewis Clark, surveyor general of Illinois and Missouri. Now, therefore, be it known, that Joseph Brazeau, or his legal representatives, is entitled to receive a patent for thirteen acres and sixteen hundredth of an acre, equal to sixteen arpents of land, the contents of said survey No. 3332, which is situated in township No. 45 north of the base line, and range number 7 east of the principal meridian, in the State of Missouri.

(Signed) ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

223 *Patent certificate No.* 1249.

OFFICE OF THE RECORDER OF LAND TITLES.
St. Louis, 26 *Feb'y*, 1852.

It is hereby certified that on the 15th of February, seventeen hundred and ninety-nine, Zenon Trudeau, lieutenant governor of the Spanish province of Upper Louisiana, made a concession of about 360 arpents of land to Louis Labeaume, and that on the 2d of March, of the same year, it was surveyed by Antonio Soulard, surveyor of the same province, to the amount of 374 arpents, situated three miles north of the town of St. Louis. It is further certified that the board of commissioners, appointed in pursuance of the fifth section of the act of Congress approved the 2d of March, 1805, entitled "An act for ascertaining and adjusting the title claims to land in the Territory of Orleans and district of Louisiana," confirmed, on the 22d of September, 1810, 356 arpents to Louis Labeaume, agreeable to the aforesaid concession, and on the 14th of June, 1811, they issued this certificate, numbered 982, for that confirmation, under the fourth section of the act of Congress approved the 3d of March, 1807, entitled "An act respecting claims to land in the Territory of Orleans and Louisiana." It is further certified that the Hon. A. H. H. Stuart, Secretary of the Department of the Interior, decided on the twenty-fifth day of July, eighteen hundred and fifty-one, that those claiming under Labeaume are entitled to a patent for the land according to Soulard's survey and Labeaume's possession; that he directed the necessary survey to be made, and a patent issued in conformity therewith. It is further certified that the lines of the said Soulard survey have been retraced in conformity with the decision referred to, as appears from the accompanying plat and description of survey numbered 3333, authenticated and returned this day to this office by Mr. Lewis Clark, surveyor general for Illinois and Missouri.

Now, therefore, be it known, that Louis Labeaume, or his legal representatives, is entitled to receive a patent for three hundred and thirty-nine acres and sixty-eight hundredths of an acre, equal to 399 30-100 arpents of land, the contents of said survey No. 3333, which is situate in township numbered 45 north of the base line, and range 7 east of the fifth principal meridian, in the State of Missouri.

(Signed) ADOLPHE RENARD,
U. S. Recorder af Land Titles in the State of Missouri.

TO JUSTIN BUTTERFIELD, Esq.,
Commissioner of the General Land Office, City of Washington.

Opinion of A. H. H. Stuart.

The opinion of A. H. H. Stuart is in the words and figures following, to wit:

In relation to the claims of Esther, Brazeau, Labeaume, and Chouteau, the facts of these cases, as disclosed by the record, are as follows: (*a.*)

It is admitted on all hands that the land in controversy was,
224 in the beginning of the year 1793, part of the royal domain; on the 2d October, 1793, Esther, a free mulattress, filed her petition to Don Zenon Trudeau, asking a concession or grant of a piece of land situated on the borders of the Mississippi River, bounded on three sides by His Majesty's domain, and on the other side by the banks of the Mississippi River; the northern part of the concession, now petitioned for, to be situated between the mound commonly called La Grange de Terre and the banks of the Mississippi, having for its two ends four arpents in *or* length or depth, running about from E. N. E. to W. S. W. by twenty arpents in length or depth, running about from N. N. W. to S. S. E.; annexed to this petition was a sketch or rough draft of a plat, which, however, does not profess to be the result of an actual survey, or to be accurate in itself; for, instead of following the river, it makes the eastern boundary to touch the river only at its northern extremity; on this sketch the Grande de Terre is located about three arpents below or south of the upper or northern extremity of the tract. On the 3d of October, Zenon Trudeau certifies that having ascertained the land petitioned for to be part of the royal domain, he has put the petitioner in possession of the tract petitioned for, according to the boundaries designated in her petition; on the 5th October, 1793, a concession was made of the land describing its boundaries, nearly in the language of the petition: "The northern part of the present concession to be situated between the small mound called the Grange de Terre and the banks of the Mississippi River." No actual survey was made of this tract at the time, nor for many years afterwards, nor does it appear that the mulattress entered into actual possession of it.—(See Doc. B.) On the 1st June, 1784, Joseph Brazeau filed his petition with Don Zenon Trudeau, asking a concession of "a tract of land situated beyond the foot of the small mound or Grange de Terre, of the width of four arpents, that shall extend from the bank of the Mississippi in a W. go S. W. course, by about twenty arpents in length, which are to begin at the foot of the hill on which stands the aforesaid Grange de Terre, and ascend to the vicinity of the Rocky Creek on the N. N. W., so that the said tract asked for be bounded east by the banks of the Mississippi, and the other sides, in part, by the domain of His Majesty, and partly by lands reunited to the said domain, across which the present concession passes." On the 10th of June, 1794, the lieutenant governor, Trudeau, after reciting that the land is liable to concession, and that the grant will injure nobody, certifies that he has put the petitioner in possession of the land prayed for, "having four arpents in front, by twenty in length, that shall extend in the N. N. W., from the foot of the hill upon which stands the Grange de Terre, to the vicinity of the Rocky Creek Branch, and in the S. S. E. it shall be bounded by the concession granted to the free mulattress named Esther. On the 25th June, 1794, the governor, Trudeau, makes a concession to Brazeau "of the lands above designated, &c., that shall begin beyond the ascent (montee) called Grange de Terre, extending N. N. W., to the vicinage of Rocky Creek, bounded on one side by the breach (ecore) of the Missis-

225 sippi, and the opposite side by land reunited to the domain of His Majesty, through which passes the present concession, one end of which is to be bounded by the concession of the free mulattress named Esther. On the 12th of May, 1798, the governor (Trudeau) certifies that the concession of the above tract of land, with the exception of four arpents, has been sold, ceded, and transferred to Louis Labeaume, by deed executed before us on the 9th of May, this present year, and filed in the archives of this post. The deed describes the reservation as follows:

"Reserving to himself four arpents of land, to be taken at the foot of the mound, in the south part of the said tract." There is no evidence that this tract was ever actually surveyed, but it is proven that Brazeau was in actual possession of it, and that he built a lime-kiln on it, and cultivated up to the foot of the mound. (See dep. of Cerre Vasquez and others.) Shortly after this conveyance from Brazeau, but on what precise day does not appear, Labeaume filed his petition with Don Zenon Trudeau, setting out his purchase from Brazeau, and stating "that the depth of his land being very narrow, and the petitioner having nearly put the whole under cultivation," and asking the governor to grant to him 360 arpents of land, including therein the land which said petitioner bought from Brazeau; that is to say, twenty arpents in depth from the Mississippi, in ascending the Rocky Branch W. ¼ S., by sixteen arpents in front, along the Mississippi, to be taken from the descent of the road into the creek, which is the same front of the land of the petitioner. The angle (measuring triangle) formed by the perpendicular from the road to the river, by the creek, and by the river, shall complete, or about, the tract asked for by the petitioner." On the 15th of February, 1799, Zenon Trudeau directs "that the surveyor, Don Antonio Soulard, shall put the interested party in possession, and execute the survey in continuation, to serve to obtain the title in form, from the said governor general, which is wished for." On the 10th of April, 1799, A. Soulard certifies that, on the 2d of March, of the same year, he executed the survey of Labeaume, pursuant to his petition, for 374 superficial arpents; said survey was made in the presence of the proprietors and his adjacent neighbors. He further certifies that "stone bounds were set, at the distance of twenty arpents between each other, with dross of iron at their foot; all trees found on the lines were blazed. (See Doc. A and note.) A plat of this survey was made out by Soulard, and the points where the stone bounds or marks were placed are designated on it, viz, one at each corner, and one at intermediate points on the N. and S. lines, respectively. We have thus traced the history of the three original titles of Esther, and Brazeau, and Labeaume. The claim of Esther was sold by her, in October, 1794, to J. Clamórgan; in 1797 Antoine Roy petitioned for a grant of 600 feet square of land, which was supposed to be near the southern end of the Esther grant. The petition was referred to Soulard, the surveyor, and Clamorgan, the grantee of Esther, thereupon protested against the survey, on the ground that the proposed survey was on his land. In conse-

226 quence of this interference, the matter was referred to the governor, who decided that, as Clamorgan had not complied with the conditions of cultivation and settlement always attached to such grants, Roy should have the preference over him. On the 15th of October, 1799, Don Pierre Chouteau filed his petition with Don Carlos Dehault Delassus, praying for a grant of the vacant strip of land conceded to Mr. Antoine Roy, for the establishment of a wind-mill, in annulment of the pretentions that Jacques Clamorgan could have to said land, dated 4th

of August, 1797, which land is situated and bounded as follows: North by the line of Mr. Labeaume's tract, south by line of Mr. Antoine Roy's land, east by the river, and west by the domain of His Majesty; the said land running on the heights, and at the distance of six arpents from the river, which shall be its depth. As to the area, it can be determined only by the survey that you will be pleased to order." On the 16th of October, 1799, Lieutenant Governor Delassus, having examined the subject, says: In consideration of the objects of the petitioner in obtaining the grant, and of a decree of my predecessor, Lieutenant Governor Trudeau, of the 4th of August, 1797, written at the foot of the petition of Mr. Antoine Roy, from which it appears that the land asked for remains reunited to the royal domain, the surveyor of the Upper Louisiana, Don Antonio Soulard, shall put the petitioner in possession of the land asked for; Soulard accordingly made and returned the survey. "The four corners, and the bounds on the lines, are stones rammed with the dross of iron; they are shown on the plat registered in Book B, folio No. 6." The survey was made on the 10th of March, 1803, for 133 arpents, in the presence of the owner and his adjoining neighbors. The surveyor, in his return dated 17th of June, 1803, says: This land is situated at about twelve arpents north of St. Louis, bounded north by the land of Louis Labeaume, south, in front, by another tract, owned by Antoine Roy, and in part by that of Hyacinth Egliz, east by the bank of the Mississippi, and west by the vacant lands of the domain; and in order that the whole may be proven whenever needed, I give the present certificate, with the figurative plat which precedes, on which are shown both the dimensions of said land, and the limits, both natural and artificial, which surround it." This figurative plat gives the ditch at the southern line of Labeaume's tract as the northern boundary of the survey; and as both surveys were made by the same surveyor, and within a few days of each other, (Labeaume's having been made on the 2d of March, 1799, and Chouteau's on the 10th of March, 1803,) and in the presence of the proprietors of the land on both sides of the line, and without objection from either, great weight is given to it, not only as an official act, but explaining the views and understanding of the parties at the time. It is proper to remark here that before the date of that survey Chouteau had become owner of Brazeau's reservation, which reservation, indeed, was made expressly with the view to the fulfillment of a verbal contract, previously entered into by Brazeau, to convey to Chouteau four arpents square.
227 (See Brazeau's deed in July, 1816, reciting that, in the sale to Labeaume, on the 9th of May, 1794, "there had been reserved, in consequence of a verbal promise of sale to Chouteau, four arpents of land, to be taken at the foot of the said mound, in the southern part of the aforesaid land, therefore only selling sixteen arpents in depth to the said Labeaume.") Brazeau, Labeaume, and Chouteau were, therefore, all cognizant of their respective rights and pretentions long before the surveys by Soulard, in 1799 and 1803, were made; and yet no objection was made by either of them to those surveys. If such objection had been made, it would have been the duty of the surveyor to report it, and the contending parties would have been called on to litigate their rights, (*e.*) This view of the subject is further confirmed by the action of Mr. Chouteau, when Henry Peyroux attempted to locate his New Madrid certificate on the part of his survey immediately south of Labeaume's ditch. He at once addressed a letter to the Commissioner of General Land Office, stating that the location of that claim had been made so "as to cover the whole of a small tract of sixteen arpents,

which I have purchased of Joseph Brazeau, to whom it had been confirmed by the board of commissioners, and also part of another tract of 93 arpents, confirmed to me by the same board," (*f.*)

The testimony of Pascal Cerre, Joseph Vasquez, Auguste Brazeau, Joseph LaBarge, Joseph Hortiz, Antoine Smith, Francis Noise, and Joseph C. Brown, proves conclusively that Labeaume, immediately after his purchase, as early as 1798, proceeded to enclose his land by ditches, and it appears from the surveys of Joseph C. Brown that those ditches were, from north to south, sixteen arpents and twenty-two feet apart. Labeaume and those holding under him have continued in possession of the premises now in controversy for nearly half a century. I am now called to disturb that possession, and to grant the legal title to the contestants on the ground of a better right to the land, (*e.*) Without extending this opinion by going into any elaborate argument, I will state the conclusions to which my mind has arrived. I regard the acts of confirmation by the commissioners, ratified by Congress, as determining nothing in regard to location, but merely the matter of right where the location shall be ascertained. I consider the figurative plat, accompanying Esther's petition, as possessing but little authority. It does not profess to be accurate. If the parties stand by it, they cannot go to the river. Why, then, should it be conclusive so far as the mound is concerned when the parties admit it is not conclusive in regard to the river boundary. But there is no plat attached to the grant. If there were, the same objection would apply, (*h.*) But the words of the petition and concession are, that "the northern part shall be between the mound and the river." This language is not ambiguous; it conveys the title and it must govern; the pretention that Labeaume intended to embrace the whole of the Brazeau tract in his survey is utterly untenable. He asked for 360 arpents, and he requested that his line running westwardly from the river should by twenty arpents long. If he designed to
228 embrace the whole twenty arpents on the river, then he would have asked for a square twenty by twenty arpents, which would make 400 arpents independently of the triangle. This was palpable and could not have escaped observation. But it is proved positively that he asked for sixteen arpents front. This, multiplied by twenty in depth, gave him 320 arpents, and the triangle, (forty-two arpents,) made 362 and a fraction, which was very near the quantity intimated and petitioned for. Labeaume, Brazeau, and Chouteau, all understood the ditch as the southern line of Labeaume's tract. Their acts proved it. The universal understanding and representation of the county, which are legal evidences in such cases, proves it. The uninterrupted possession of the parties proves it.

The possession was taken, and the lines were fixed with a great deal of solemnity by a public officer, who convoked them for the purpose of witnessing this important proceeding, and their consent and acquiescence, under such circumstances, gives to the boundaries thus settled almost the same obligatory character as if they had been adjusted by contract between the parties. Chouteau seems to have been aware of this possession, and of all the facts connected with the condition of the title when he petitioned for his grant on the 15th October, 1799. He was then the equitable owner, under a verbal contract with Brazeau, of his (Brazeau's) unconfirmed reservation of four by four arpents. He also believed that Esther's grant had been annulled. His petition was based on this supposition, as it asked for a grant of the land embraced within the Esther claim. He knew also of Labeaume's survey, for it had been made but seven months before, viz: on the 20th March, 1790,

and his petition is in its very terms subordinate to the grant of Labeaume, because he asks that Labeaume's southern boundary may be the northern boundary of his tract. How, then, can it be suppposed that he, a junior claimant, asking to be bounded by a senior grant, shall be regarded as claiming in opposition to that grant, and so as to overrun the very boundary which he asks to be established? Is it not more reasonable to suppose, that having an imperfect title to the Brazeau reservation, south of the ditch of Labeaume, and wishing to consolidate his whole tract in one grant, he petitioned for the entire body of land between Labeaume's line and Antoine Roy's. Labeaume had pursued this course, and he having received evidence of his purchase of the 16 arpents from Brazeau, on the 12 May, 1708, very properly exhibited that with his petition, and asked that it might be embraced in his grant of three hundred and sixty arpents.

But the case was different with Chouteau. He had no written evidence of his purchase, and therefore could exhibit none with his petition. All he could do was to treat the land as ungranted, or still belonging to the royal domain, and ask for a concession for all between Labeaume's and Roy's tracts. When the commissioners came to act, they found the following state of facts:

1. Brazeau's claim was unquestionably good, being prior in date to all others, and he having fulfilled all the conditions of the grant, it was therefore entitled to confirmation.

229 2. Labeaume's was good, except so far as it was covered by Brazeau's.

3. Esther's being annulled, Chouteau's was paramount to it.

If Brazeau's claim had remained entire and in his hands, it would have been confirmed to him; but having been divided, and sixteen arpents front having been conveyed to Labeaume, and being united by his petition to the residue of his claim for three hundred and sixty arpents, it was confirmed to him as part of that tract. This left four arpents front to Brazeau, as far as the documentary evidence proved, and there was no alternative but to confirm that to him, leaving it to Chouteau to obtain the title from him afterwards. The only remaining to be done by the commissioners was to confirm to Chouteau the tract petitioned for, except so far as it conflicted with the Brazeau reservation. This, in my opinion, is what the commissioners intended to do, and this, I think, is the legal effect of their action. On the 26th July, 1816, we accordingly find that Chouteau obtains a deed from Brazeau, which, after reciting his grant of twenty arpents, his sale of sixteen arpents to Labeaume, and the fulfilment of the contract by Labeaume, and this reservation of four arpents front, proceeds to convey to Chouteau "four arpents of land in depth out of the southern part of the aforesaid concession, at the foot of the aforesaid mound." Can anything be clearer than this, in regard to the location of this reservation? Here, Brazeau and Chouteau both, by a solemn deed, recognize its location "at the foot of the aforesaid mound." How, then, can they be permitted, in the face of this solemn acknowledgment, to turn round and say that the land described as "at the foot of the mound" is four arpents north of that mound? If it be north of Labeaume's ditch, what title has Chouteau to it? He cannot claim it under his concession, for that calls for Labeaume's line. Neither can he claim it under the deed from Brazeau, for the land conveyed by that deed "is at the foot of the mound." Chouteau would then be without the shade of a title. Nor could Brazeau set up a claim to it, as he is estopped by his deed, and by the whole line of his conduct and his occupancy of the land below, from claiming

the land above the ditch. With regard to the entry made by the clerk of the board of commissioners, which is relied on to prove that Labeaume claimed the whole of the Brazeau tract of twenty by four arpents, it is sufficient to remark that the entry was neither the act of Labeaume, nor was it a part of the judicial action of the commissioners. It is, therefore, entitled to but little consideration, and if it were even the act of Labeaume, it would be by no means conclusive. The distinct language of his petition, in which he recites his purchase of sixteen arpents front, Brazeau reserving four arpents front, and the fact that his concession, followed by his enclosure and occupancy sixteen arpents front, and no claim to any more, would surely outweigh any such inaccuracy of description. I am, therefore, of the opinion, and hereby decide, that those claiming under Labeaume are entitled to a patent to the land
230 above the ditch, according to Soulard's survey of Labeaume's possession, and that the reservation of four by four arpents to Brazeau, and which he subsequently conveyed to Chouteau, is bounded on the north by Labeaume's south ditch, and extends to the foot of the mound. Pursuant to the principles herein settled, the necessary surveys will be made, and patents issued in conformity therewith.

ALEX. H. H. STUART.

DEPARTMENT OF THE INTERIOR, *July* 25, 1851.

"P."

Deposition of John Thibault Walter.

John Thibault Walker, of lawful age, being duly produced and sworn on his oath, deposeth and says:

Question. Do you know what is the situation of what is now block 288 in the city of St. Louis?

Answer. I know, according to the map of the city, it is bounded north by Webster street, on the east by the river, and on the west by Main street; when I first knew the property the streets were not laid out and opened.

Question. State what you know about the occupation of that ground.

Answer. I came here in 1837 to meet a cousin. He had then leased this property of William Chambers. In 1838 I formed a partnership with him, and remained in partnership over a year with him, during which time we paid the rent for the property to William Chambers. My cousin remained there about two years after the dissolution of our partnership.

Question. How far south from Webster street did that lot extend?

Answer. I think it extended about three hundred feet or more, or less; I can't say exactly. At one end of the lot we had a slaughter-house, at the other end a dwelling-house.

Question. During your possession did any one set up claim to the property or molest you in the possession of it?

Answer. None did.

Question. Who has occupied the lot since your cousin?

Answer. I saw a saw-mill there; don't know who owned it.

Question. What became of your cousin?

Answer. He died three years ago.

And further this deponent saith not.

JOHN T. WALTER.

"Q."

--New Madrid Certificate No. 184.—Dated Nov. 16th, 1815. The assignment thereof, 6th December, 1816, by Taylor Berry. The assignment thereof by Thomas Rector, July 4, 1816, claims, and also the surveys thereof and certificate, as follows:

231 *N. M. Certificate* 184.

OFFICE OF THE RECORDER OF LAND TITLE,
St. Louis, November 30, 1815

I certify that a lot of one arpent, in the town of New Madrid, in the county of New Madrid, which appears from the books of this office to be owned by Henry Peyroux, under Francis Hamelin, has been materially injured by earthquakes, and that in conformity to the provisions of the act of Congress of 17th February, 1815, the said Henry Peyroux, or his legal respresentatives, is entitled to locate any quantity of land, not exceeding one hundred and sixty acres, on any of the public lands of the Territory of Missouri, the sale of which is authorized by law.

FREDERICK BATES.

Assignment of N. M. Certi. 184.

The assignment thereof is in the words and figures following, to wit: This witnesseth, that for and in consideration of the sum of three hundred and sixty dollars, to me in hand paid by Thomas Rector, the receipt whereof I hereby acknowledge, I have granted, bargained, sold, assigned, and transferred to the said Thomas Rector all my right, title, claim, and interest in and to the within certificate, and the land to be located by virtue thereof.

As witness my hand and seal at St. Louis, this sixth day of December, 1816.

TAYLOR BERRY. [SEAL.]

Assignment of N. M. Cert. 184, *by Thomas Rector.*

The assignment by Thomas Rector of the said New Madrid certificate is as follows: This witnesseth, that for value received, the receipt of which is hereby acknowledged, I have granted, bargained, sold, assigned, and transferred to Elias Barcroft, all my right, title, claim, and interest unto the undivided three-fourth part of the within certificate, and the land located, or which may be located in virtue thereof, and all other privileges and appurtenances thereunto belonging, or in any way appertaining.

July 4, A. D. 1817.

THOMAS RECTOR.

Attest:
WHORT RECTOR.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, March 14, 1853.

I certify that the foregoing, marked "A," is a copy of the original certificate No. 184, now on file in this office of Frederick Bates, recorder of land titles in the Territory of Missouri, issued under the provis-
232 ions of an act of Congress therein mentioned, of the 17th of Febru-

ary, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, (in the Missouri Territory, who suffered by earthquakes.) The parts marked B and C are copies of assignments written upon the back of said certificate.

D. A. SPAULDING,
Surveyor General.

Survey of certificate No. 184.

The survey thereof is as follows:

Thomas Rector and Elias Barcroft enter for Henry Peyroux (under Francis Hamelin) or his legal representatives, any quantity of land, not exceeding one hundred and sixty acres, by virtue of a certificate, No. 184, dated November 30, 1815, and issued by Frederick Bates, esquire, recorder of land titles for the Territory of Missouri, beginning at the southeasterly or lower corner on the margin of the Mississippi River, of a tract of land on which William Christy at present resides, and which said tract of land formerly belonged and is confirmed to Louis Labeaume; pursuing from said corner westerly with the lower line or southern boundary of said tract of land to the point where the easterly boundary or end line of the forty-arpent lots, situate in what is by some called the little prairie, near the town of St. Louis, intersects the same. Thence southerly with said line or lines so far that an easterly line extended therefrom in such direction to the Mississippi River, and up the same along the edge of the water at low-water mark, to the beginning, shall include the quantity as nearly in a square as may be, deducting therefrom and forever disclaiming all lands heretofore actually confirmed, which may be comprehended as inclosed by the said boundaries or calls of this entry.

April 7th, 1817.

THOMAS RECTOR.
ELIAS BARCROFT.

Class No. 105.

Certificate of location of certificate No. 184.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, March 14, 1853.

I certify that the above is a correct copy from the original notice of location, made in virtue of certificate No. 184, is issued on the 30th November, 1815, by Frekerick Bates, recorder of land titles in the Territory of Missouri, pursuant to the act of Congress approved on the 17 February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who have suffered by earthquakes."

D. A. SPAULDING,
Surveyor General.

233 "R."

United States survey for Pierre Chouteau, and plat No. 671, on which survey a patent issued to said Pierre Chouteau in 1824. Said survey and plat are as follows:

(Here follows map marked page 233.)

Surveyed for Peter Chouteau, claiming in his own right 93.01 arpents, equal to 79.12 acres.

Beginning at the upper corner stone of Antoine Roy's claim of 11.58 arps. on the river. Thence with Roy's line, S. 74½°, W. 17 ch's 50 l'ks, a stone set on the north edge of a mound. Thence N. 15°, W. 14 ch's 67 l'ks, a stone set in the front line of the common field. Thence with the lines of the said fields N. 2°, W. 29 ch's 60 links, an old stone, corner a little N. W. of the large mound. Thence N. 74½°, E. 14 ch's 50 l'ks, a stone on the bank of the river, his upper corner. Thence down with the river S. 4°, E. 5 ch's 70 l'ks; S. 18°, E. 14 ch's 50 l'ks; S. 13°, E. 9.00 ch's; S. 10°, E. 7.00 ch's; S. 6°, W. 8.00 ch's, to the beginning.

April 2, 1817.

(Signed) JOS. C. BROWN, *D. S.*

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, March 18, 1853.

I certify that the above plat and field-notes of survey No. 671, in the name of Peter Chouteau, are correctly copied from page 220 of book "B," of the record of private surveys on file in this office.

D. A. SPAULDING,
Surveyor General.

"S."

Deed of Esther to Clamorgan.

Deed of Esther to Jacques Clamorgan.—Deed from Jacques Claorgan to Pierre Chouteau, as follows:

I, the undersigned, Esther, a mulatto woman, with my ordinary mark, in presence of witnesses, declare by these presents, that I have sold, ceded, quit-claimed, and abandoned, now and forever, and promise to warrant and defend against all mortgages entailed or other incumbrances whatsoever, to Mr. Jacques Clamorgan, a merchant of this place, now present, accepting for himself, his heirs and assigns, a piece of land situate north of this town, between the Big Mound and the Mississippi River, having a width of four arpents, by twenty arpents in depth from the Mississippi to the hills, as the whole are to be found. Having obtained it as a grant from Mr. Don Zenon Trudeau, lieutenant governor, on the fifth day of October of last year, seventeen hundred and ninety-three, which I gave up and relinquished in favor of said Clamorgan, renouncing all rights, claims, titles, and interest, now
234 and forever, for myself and representatives in consideration of the price and sum of eighty dollars, which have been paid to me by said Clamorgan, of which sum I gave him by these presents a good and lawful receipt and discharge, and without any reservation.

In testimony whereof I have signed at St. Louis, this second day of September, seventeen hundred and ninety-four.

mark.
of + the
said

Witness—
J. BRAZEAU.
Witness—
BENETO VASQUE.

Deed from Clamorgan to Chouteau.

Be it known to all who shall see these presents, that I, Jacque Cla-

morgan, for value received, do sell, cede, quit-claim and transfer, relinquish and abandon, to Mr. Pierre Chouteau all right, title, interest and claim which I have, and may have, on the piece of land mentioned in the within deed, recorded in book A, page 204 and following, without any recourse whatsoever against me.

In testimony whereof I have signed and sealed at St. Louis, November 6th, 1810.

[SEAL.] J. CLAMORGAN.

In presence of—

P. CHOUTEAU, JR.

P. PROVONCHERE.

"T."

Proceedings, petition, order for possession grant, and proceedings for confirmation of the Esther grant of four by twenty arpents of 1793 and 1806 and 1836, as follows:

Proceedings for confirmation of Esther grant.

Jacques Clamorgan claims the following tracts of land, viz: 1. As assignee of Thomas Tyler, &c., 10. A tract containing 80 arpents, between the Mississippi and the mound call' La Grange, purchased of Esther, a free mulattress woman, to whom the same was granted for pasture, hay, &c., in October, 1793.

(For translation see page 65.)

A Monseur Don ZENON TRUDEAU:

Je supplie hem Clement la nomme Esther, mulatier, libre demeurant dans cette ville de Saint Louis, et a l'honneur de vous exposer que ills deviserait obtenis dans la partie dunord de cette ville, une terre domaine de sa majesta et sur l'autre par les bords du Mississippi, dont la partie du nord de la presente concession demandee soit situee entra la monticule nomme La Grange de Terre et les ecou du surdit Mississippi ayant sur les deux bonts quatre arpens de terre de port qui erant a pen pres de l'ent et non est a ceurt sud onest sur signe autre arpens d'etendue on profundens qui iront a pen pres du nord, nord a est au sud sud est aferi que la suppliante puisse en soir en propriete, pour ille ses hises on ayant eause (a) l'effet d'y recoles des fo in et faire pasturos ses anmonux en til autre emploi convenable a ses interets et la suppliante ne cessera de rendre graces a vos bontes.

St. Louis, ce 2 de 9 bre, 1793.

Signe une croix la marque d'Esther.

Mons. Lieutenant Governor, a pres avoir examine que la terre demandie appartient de sa Majeste et qu' elle en parte pepidice a personne, I certifie avoir mi en possession la nomme Esther, mulatroe, libre de la portion de terre designees pas su requite ayant quatre arpents de front en allant a pen pris de l'est nord de l'est nord est a l'onest sud onest sur vingnts arpents en allant a pen pres des nord onest au sud sud est, situee dans la partie du nord de cette ville outre la monticule nomme La Grange de Terre et les bords du Mississippi, en descendants le dit fleure dont trois cotes de la ditte terre demandre sont bonses par le domaine de la majeste et l'autre cote que est dans la partie de l'est nord

est, est bonses par les sene du Mississippi ainsi qui it est figure par le plan.

Pons en constates nous avone donne le present en la ville de St. Louis, ce 3 Fvr, 1793.

(Signe) ZENON TRUDEAUX.

Zenon Trudeaux, lieutenant governeur, de la partes occidentale des Illinois, en consequence de la demande a nous faite pas la nomme Esther, mulatrese, libre demeurant, en cette ville de St. Louis, par sa requette en date du deux au present mois, et apres l'avios mise en possession nous memes suivant l'acte, que nous en avons dresse le jour suivant nous avons suradi et concedens a la dite nommee Esther, a libre du propriete, pone elle ses lions au ayant cause on tous autres qui permaient representes ses droits la par teinde terre, ci devant designee ayant quatre arpens de face pour ses deux entrairientes qui serent a pen pres de l'est nord en allant a onest, sud onest sur vingt autres arpents de hauteur en allant a pen pres du nord, nord au sud sud est, situee on nord du cette ville alois ticulo nom moi La Grange de Terre, et les bords du Mississippi, en descendant le dit fleuve proqu'n a la concurrence, et etendue des sus dits vingt arpens de porfondeur. The nord nord onest, the sud sud est, et le onest sud onest, qui sont a pen pres la direction des lignes surait bornes par le domaine de sa majeste et le cote de l'est nord est, qui est le cote l'est nord est qui est le cote, et a fleuve sera borne por le Bur de ses econsa finque la dite nomme Esther puisse y secoleur le fonsage dont elle a beiour y faire patri cunee annaux, et en faire tel autre usage convendble a ses intersts demenant alois sujette aux loix charge et impositions qui'il fleuva a su majeste d'g imposes a l'avenir.

236 Donne la ville de Saint Louis des Illinois a conquenne jour du nois, d'Octobre de l'annee mil sept cent quatre vingt tries; approve trente deux lignes en marage ci contre par renxoi il une croix le cut demise en possession.

ZENON TRUDEAU.

A la reclamatin de Mr. Jacque Clamorgan, je certifie que la presente copi est en te at conforme u l'original poste soule No. 10 au livre 5 intitule "comme suit;" livre pour sevier a l'enregistriement pour les concession commence le 21 du mois de Septembre de l'annee 1783, por Zenon Trudeau:

Lieutenant de gouverneur aux Illinois, contenent ils feuilles sequel lion depose a l'archive de l'arpentage, de ce temoire a macharge. En foi de quoi jai delivre le present a l'inter esse pour lieu sevoir et valoir partout on besoin sera et comme de raison a contrates sur ses proclamations.

St. Louis, trente Novembre, mil huit cent cinq.

ANTONIO SOULARD,
Arpentier General en Louisiane.

Mon leur signe Esther mulatresse sans ma marque ordinaire presence de temorine declare pur ses presents avoir venda, cede laise et abandonee tant dis a present que pour toujours prometo quarantir et preserves de tontes hypotheque substitutions et autre empechement qu'le on ques au Sieur Jacque Clamorgan negocient en ce lieu ici present acceptant pour lieu lessienes au ayant causes une livre situee au nord de cette ville entre La Grange de Terre et le fleuve Mississippi, ayant

quatre arpens, de large seis vingt arpens de profeundeur, en allant des Mississippi aux cotes tout ainse que le titre de concession de Mr. Don Zenon Trudeau, lieutenant gouverneur, en date des cinquienne jour des mois d'October, de l'annee desenere, mil sept cent quatre vingt tieze, de tout quois je une deu antis, et discite en faveur du Mr. J. Clamorgan renow caut a tous droits pretensions, nous raisons on actions tont des a present qui pour te ayans pour moi comme pour les miens may surrant le pix et somme de quatre vingt piastri qui mont ete payees par le dit Clamorgan de la quelle somme je lui donne par ces presents bonne et valable quittance et discharge et sons renounce reserve ve.

En foi de quoi fai signe, a St. Louis, ce 2 de Septembre de mil sept cent quatre vingt quatroiz.

Marque de + la nomme.

Temoins:
JOS. BRAZEAU,
BENETO VASQUE, *Temoins.*

Recorded Book A, pages two hundred and four and following, this tenth December, 1805.

M. P. LADUC, *Recorder.*

(See recorder's book C, pages 134, 137, and 160.)

237 AUGUST 22, 1806.

The board met agreeably to adjournment. Present, the Hon. John B. C. Lucas, Clement B. Penrose, and James L. Donaldson, esq.

Jacque Clamorgan, ass't of Esther, a mulattress woman, claiming four by 20 arpents of land, situate on the prairie of St. Louis, produces a duly-registered warrant of survey from Zenon Trudeau, dated 2nd October, 1793, granted for the purpose of cutting hay, and a deed of transfer of the same, dated the 2nd September, 1794.

Joseph Brazeau being duly sworn, says that to his knowledge, claimant did make hay on said land, but cannot positively say when. The board reject his claim.

Adjourned to to-morrow, 9 o'clock a. m.

(See book No. 101, minutes of said board, pages 483, 485, and 486.)

FRIDAY, *February* 17, 1809.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

On application of Pierre Chouteau for a decision on his claim for 983 arpents and one perch of land, situate above the town of St. Louis, stating that said land has been taken in execution as the property of Jacques Clamorgan, as assignee of Esther, a mulattress, recorded in book "C," page 159, of the recorder's office; claim of Pierre Chouteau, acted on, in book 3, page 443; that of Jacques Clamorgan, in book No. 1, page 485; the claim of Antoine Roy, also interfering. (See book No. 3, page 374.) The board agree to take up the same. On a question being made to take up the claim of Jacques Clamorgan, assignee of Esther, mulattress, Clement B. Penrose and Frederick Bates, commissioners, voted for it, having reference to the concession in the claim of Antoine Roy for 600 square feet; John B. C. Lucas, commissioner, voted against it, because the said claim is not laid over for decision, and the time given by the board for the taking of testimony in claims is not expired. The board

are unanimously of opinion that the claim of Jacques Clamorgan, assignee of Esther, ought not to be confirmed.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See minutes of old board, No. 3, pages 475 and 476.)

WEDNESDAY, *March 6th*, 1833.

The board met pursuant to adjournment. Present, F. R. Conway, A. G. Harrison, commissioners. (Doc. 70, page 310: Esther, free mulatto woman, claiming 80 arpents of land. See Livre Terrien, No. 5, pages 10 and 11; book C, 159, 160.)

Rene Dodier, being duly sworn, says that he knew Esther, a free mulatto woman, who lived with Clamorgan; that she had a great deal of land near the mound commonly called La Grange Terre; that she lived with Clamorgan as if she had been his wife; that Clamorgan had
238 several children by her; that Esther had cattle, which were sent to pasture along with Clamorgan's cattle on said piece of land, and that she was generally known as being the lawful owner of said land; that said land was confined in the common fields of St. Louis; the fence of said field running on *the* this side of where now lives Mr. Mullanphy. Witness further says that he thinks Esther's land extended to the bank of the Mississippi, as it did not run west of the road going to Bellefontaine. (See book No. 6, page 111 and 112.)

TUESDAY, *April* 26, 1833.

The board met pursuant to adjournment. Present, A. G. Harrison, F. R. Conway, commissioners.

No. 70, page 310.

In the case of Esther, claiming 80 arpents of land, see page 111 of this book.

Jean Baptiste Reviere dit Basconne, duly sworn, says he knew Esther, a free mulatto woman, who lived with Clamorgan; that, to his knowledge, said Esther had, to the north of St. Louis, a small piece of land, which had been given to her by the public, at the end of their common fields, and that Esther made use of said piece of land as a pasture for her calves and cows; that the said land was situated between the mound commonly called La Grange de Terre, and the next mound south of La Grange de Terre, and running from the descent of the hill, between the above said mound and the Mississippi; that he does not know exactly how long she possessed the said land. He further says that when he said that the land had been given to Esther by the public, he meant the government.

Francis Duchanquette, duly sworn, says he knows that Esther owned a piece of land situate at the foot of the Grange de Terre, and running thence to the Mississippi, but does not know what quantity of land; that said Esther was the reputed owner of said land for more than ten years.

Elizabeth Hortez, duly sworn, says that she heard husband say that Esther had a piece of land situate about the Grange de Terre, running towards the Mississippi; that the cows which were at Clamorgan's were always called Esther's.

(See book No. 6, pages 160 and 161.)

FRIDAY, *November 8th*, 1833.

The board met pursuant to adjournment. Present, L. F. Linn, A. G. Harrison, F. R. Conway, commissioners. 70. Esther, free mulatto woman, claiming 80 arpents of land. (See pages 111 and 160.) The board are unanimously of opinion that this claim ought to be confirmed to the said Esther, or her legal representatives, according to the concession. The board adjourned till to-morrow at 9 o'clock. (Book No. 6, pages 307, 310, and 312.)

L. F. LINN.
A. G. HARRISON.
F. R. CONWAY.

239

RECORDER'S OFFICE,
St. Louis, 27th March, 1848.

I certify the foregoing to be truly transcribed from the books and records of this office at the pages therein referred to.

ADOLPH RENARD,
U. S. Recorder of Land Titles, St. Louis, Mo.

Fac-simile of the petition and grant to Esther from Livre Terrien.

Petition of Esther to Don Zenon Trudeau.

Esther, a free mulatto woman, residing in this town of St. Louis, humbly supplicates, and has the honor of representing to you, that she would wish to obtain, in that part north of this town, a piece of land, situated on the boarders of the Mississippi, bounded on three sides by His Majesty's domain, and on the other side by the bank of the Mississippi. The northern part of the concession, now petitioned for, to be situated between the mound, commonly called La Grange de Terre, and the banks of the Mississippi, having at its two ends four arpents in front, running from about the east-northeast to the west-southwest, by twenty arpents in length or depth, running about from the north-northwest to south-southeast, in order that the petitioner may enjoy the same, in full property for her, her heirs or assigns, to make hay, pasture her cattle, or for any other purpose suitable to her interest. And the petitioner shall never cease to render thanks to your goodness.

One cross + Esther's mark.

ST. LOUIS, *October*, 1793.

We, Lieutenant Governor, having ascertained that the land petitioned for belongs to His Majesty's domain, and that it is not prejudicial to any person, I certify to have put in possession the free mulatto woman, named Esther +, residing in this town of St. Louis, according to her petition, dated 2d instant; and, after having put her in possession ourselves, as appears by the document which we have drawn the next day, we have granted, and do grant to the said Esther, in fee-simple, for her, her heirs or assigns, or any other who may represent her rights, the piece of land here above designated, having four arpents in width at its two extremities, running from about east-northeast to west-southwest, by about 20 arpents in length, running from about north-northwest to south-southeast, situate to the north of this town; and the north end of the present concession shall be situated between the mound called La Grange de Terre and the Mississippi, and thence descending the said river until the complement of the above-mentioned 20 arpents in depth. The north-northwest, south-southeast, and west-southwest, which are

about the courses of the lines, shall be bounded by His Majesty's domain, and the north-northeast side, which is the side facing the Mississippi River, shall be bounded by the edge of its banks, in order that the said Esther may gather thereon the forage she requires, pasture
240 her cattle, and for such other purposes as may suit her interests, remaining subject to the laws, taxes, impositions which it may please His Majesty hereafter to impose.

Given in the town of St. Louis, of Illinois, this fifth day of October, 1793. Approved, thirty-two lines written on the margin, here behind, and marked by a cross on the decree of delivery of possession.

ZENON TRUDEAU.

In consequence of the demand made to us, made by the free mulatto woman named Esther, residing, &c.

"C."

RECORDER'S OFFICE,
St. Louis, 2nd May, 1849.

I do certify that the attached papers, marked A, B, C, and signed by me on the left margin, are, as far as I am able to take it, a true facsimile of the concession of 80 arpents of land to Esther, a free mulattress, as the same is recorded at folio 10 and 11 of Livre Terrien, No. 5, in this office. The spaces between the red lines show the sizes of the pages of the record. I have tried to write the marginal note on B, and the words from "aprouve" to "Trudeau," in C, with blacker ink that the body of the record, in order to conform to the original, in which the said marginal note on B, and the said words in C, from "aprouve" to "Trudeau," appear to have been written with blacker ink, and are more distinct than the body of the said record. The marginal note on B is the only interlineation in the margin of the six Livre Terrenis, in this office.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in Missouri.

"U."

Deed of John Magwire to Lewis V. Bogy, June 14th, 1846, as follows:

Deed of Magwire to L. V. Bogy.

This deed, made and entered into this sixth day of June, eighteen hundred and forty-six, by and between John Magwire, and Angelene, his wife, of the county of St. Louis, in the State of Missouri, parties of the first part, and Lewis V. Bogy, of the city and county of St. Louis, State of Missouri, party of the second part, witnesseth: That the parties of the first part, in consideration of the sum of four hundred and seven dollars, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, remise, release, and forever quit-claim unto the said party of the second part, all and singular the following property, being the same which the said John Magwire,
241 by deed dated on the fourth day of June, instant, acquired from Alexander Hamilton, administrator of George F. Strother, deceased, and described therein as follows: that is to say, a certain tract or parcel of land situate in the city of St. Louis, containing sixteen arpents, running on the Mississippi River four arpents, and running back

four arpents, being the same tract or parcel of land which the said Strother acquired from Pierre Chouteau and wife, by deed dated June 1st, 1826, which deed is recorded in the recorder's office of the county of St. Louis, in Book N, page 77, and to which deed reference is therein and here also made for a more particular description; to have and to hold the same, together with the rights, immunities, privileges, and appurtenances to the same belonging, unto the said party of the second part, and to his heirs and assigns forever; the said John Magwire hereby covenanting that he and his heirs, executors, and administrators, will warrant and defend the title to the premises to the said party of the second part, and to his heirs and assigns forever, against the lawful claims of all persons claiming by, through, or under him, but not otherwise.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN MAGWIRE. [SEAL.]
ANGELINE MAGWIRE. [SEAL.]

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that, on this tenth day of June, eighteen hundred and forty-six, before me, a justice of the peace in and for said county, personally appeared John Magwire, and Angeline, his wife, who are both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; she, the said Angeline, being by me first made acquainted with the contents of said instrument, acknowledged, on an examination separate and apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her said husband.

Taken and certified the date last aforesaid.

GEO. A. HYDE,
Justice of the Peace.

Filed and recorded June 11th, 1846.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, do hereby certify the foregoing to be a full and complete copy of an instrument of writing, and also of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains recorded in my office, in Book Z, No. 3, p. 498.

Witness my hand and official seal of office, this 10th day of March, A. D. 1848.

S. D. BARLOW, *Recorder.*

242 "V."

Agreement between John Magwire and the Marine Railway Company, the 2nd of January, 1852, as follows:

Agreement between John Magwire and the Marine Railway Company.

Whereas the stockholders of the St. Louis Marine Railway Company claim to own four arpents in front, by four arpents in depth, fronting

on the Mississippi River, and north on the ditch called Labeaume's ditch; and whereas, at a meeting of said stockholders, in pursuance of the act of the General Assembly of the State of Missouri, approved the fifteenth day of February, A. D. one thousand eight hundred and forty-one, it was resolved that said land should be conveyed *conveyed* to John Magwire; and whereas there are controversies concerning the same: Now, therefore, this agreement witnesseth: That the said John Magwire covenants and agrees with each and every of said stockholders, their and each of their heirs and executors, administrators, and assigns, that upon being vested with the title of the said St. Louis Marine Railway Company to said land north of said ditch, he, the said John Magwire, will take all lawful ways and means to recover the same, without delay, at his own expense; and in case of the recovery of the whole or any part thereof, he, the said John Magwire, will convey to each and every of the stockholders of the said St. Louis Marine Railway Company, such interest in said land recovered as shall equal one-fourth of the interest, at the date hereof, any stockholder, his or her heirs or assigns, or legal representatives, may have in said land, legally or equitably; that is to say, the stock of said company being estimated at two hundred shares, and each share every one two-hundredth part of said land; and in case of recovery, said Magwire is to convey to the person or persons representing any share of said stock in said company, one-fourth of the two-hundredth part of the land recovered for each share of stock held by any person or persons at the time of said recovery.

The following persons, or their legal representatives, are the owners of the respective shares in the St. Louis Marine Railway Company, at the date thereof:

Daniel D. Page, seventy shares; Louis A. Benoist, fifty shares; the legal representatives of the late John Mullanphy, thirty shares; Peter Lindell, twenty shares; the legal representatives of Ann Biddle, twenty shares; Mrs. Farrar, widow of Bernard G. Farrar, ten shares.

In witness whereof the said John Magwire hath hereunto set his hand and seal this second day of January, A. D. 1852, in the presence of—

[SEAL.] JNO. MAGWIRE.

Be it remembered, that John Magwire, who is personally known to the undersigned, justice of the peace within and for the county afore-
243 said, to be the person whose name is subscribed to the foregoing deed, as party thereto, this day appeared before me, at the county aforesaid, and then and there acknowledged that he executed the same for the pu'poses therein set forth.

Taken and certified this 2nd of January, 1852.

MANN BUTLER,
Justice of the Peace.

Filed and recorded January 5, 1852.

S. D. BARLOW, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder in and for the county of St. Louis, do hereby certify the foregoing to be a full and complete copy of an instrument of writing, and of the certificate of acknowledgment, and of the date of filing and recording thereof, as fully as the same remains of record in my office, in Book F, No. 6, pages 97 and 98.

Witness my hand and official seal the 9th of February, 1852.

S. D. BARLOW, *Recorder.*

"W."

The defendants thereupon read in evidence the whole of the record and bill of exceptions, and final decree and judgments, in the case of John Magwire versus Mary L. Tyler and others, in the St. Louis land court, supreme court of Missouri, and Supreme Court of the United States, as follows:

Proceedings in the St. Louis land court are in the words and figures following, to wit:

Proceedings in land court.

Be it remembered that, on the twenty-second day of August, in the year of our Lord one thousand eight hundred and fifty-five, there was filed in the office of the clerk of the St. Louis land court a petition which is in words and figures following, to wit:

(The original petition omitted by stipulation.)

And on the second day of July, A. D. 1856, there was filed an agreement, in the words and figures following, to wit:

In the St. Louis land court.

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

The clerk of the St. Louis land court, in making a transcript of the record for the supreme court, may omit the original petition and demurrer thereto.

KRUM & HARDING,
For Pl'ff.
HILL, GROVER & HILL,
Att'ys for defendants.

244 ST. LOUIS, *July* 1, 1856.

Upon the filing of the original petition a summons was issued to the sheriff of the county of St. Louis in the words and figures as follows, to wit:

Summons.

THE COUNTY OF ST. LOUIS, *State of Missouri, ss:*

To the sheriff of St. Louis county, greeting:

We command you to summon W'm C. Tyler, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Joseph Templeton, Marshall Brotherton, Calvin Case, Benj. F. Jennings, Joseph Cochrane, Thomas J. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith, and Virginia M., his wife, Geo. W. Goode, and Frances S. M., his wife, David D. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton, and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow, and Mary H., his wife, Theodore P. Green, and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C.

G. Mitchell, William A. Pendleton, and Mary, his wife, William F. Wright, Thomas A. Wright, William H. Glasgow, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickland, trustees of Martha A. Wills, Alfred Dryden, and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, Orleana Schaumburg, George Case, George T. Hardcastle, and Adalade, his wife, defendants.

In the St. Louis land court.

To the honorable judge of the St. Louis land court, in chancery sitting:

John Magwire, the plaintiff in the above-entitled cause, by
247 leave of the said court, exhibits this, his amended petition, and states that, on or about the second day of October, in the year 1793, one Esther, a free mulattress, residing in the then town of St. Louis, exhibited her petition in the Spanish language to Don Zenon Trudeau, lieutenant governor of the Spanish provence, afterwards known as Upper Louisiana, asking for a concession or grant of land in the northern part of said town of St. Louis, situated on the borders of the Mississippi River, to be bounded on three sides by the domain of His Majesty the King of Spain, and on the other by the shores of the Mississippi, the northern part of which to be situated between the earthborn La Grauge de Terre and the bluffs of the Mississippi, having on each end four arpents, running about from the east northeast to the west southwest, and extending twenty arpents nearly, running from the east northwest to the south southeast, to which petition there was annexed a plat or diagram showing the form and relative position of the tract of lands asked for, a copy of which petition, correctly translated into the English language, and a copy of said plat, are herewith filed, and marked A, and made an exhibit herein. The plaintiff further states, that on or about October 3, 1793, Don Zenon Trudeau, said lieutenant governor, made his declaration and certificate in writing in the Spanish language, to the effect that he had put said Esther into possession of the said tract of land asked for by her in her said petition, a copy of said declaration and certificate, correctly translated into the English language, is filed herewith, and marked B, (S'exh.) and made an exhibit herein. The plaintiff further states, that on or about the 5th day of October, 1793, the said Trudeau, lieutenant governor aforesaid, made a concession in writing in the Spanish language, and in conformity with the laws, usage, and practice of the Spanish government, of said tract or parcel of land to said Esther, a copy of which concession, correctly translated into the English language, is filed herewith, marked C, and made an exhibit herein. The plaintiff further states, that on or about June first, 1794, one Joseph Brazeau, a citizen of the said town of St. Louis, exhibited his petition to said lieutenant

governor for a tract of land in the western part of said town, situated beyond the foot of the mound called La Grange de Terre, of four arpents in width, which are to extend from the steep bank or beach (ecore) of the Mississippi, in the west quarter southwest, by about twenty arpents in depth, that shall begin at the foot of the hill on which stands the said Grange de Terre, ascending in a northwest course to the environs of Stony Creek, so that the said tract thereby asked for be bounded on the side by the Mississippi, and on the other sides, in part by the King's domain, and in part by lands reunited to said domain, a copy of which petition, correctly translated into the English language, is filed herewith, and marked D, and made an exhibit herein.

The plaintiff further states that on or about the 10th of June, 1794, said lieutenant governor made his declaration and certificate in writing in the Spanish language, to the effect that he had put said Joseph
248 Brazeau into possession of said tract or parcel of land designated in his said petition, of four arpents front by twenty arpents deep, which shall extend in a north northwest course from the foot of the hill where stands the Grange de Terre, ascending to the vicinity of Rousseau de Pierre, (Stony Creek;) bounded on one side by the bank of the Mississippi, and the opposite side by the lands not conceded or reunited to His Majesty's domain, and at the two ends bounded on the north northwest by the vicinity of Rocky Creek, and on the other on the south southeast, shall be bounded by the land granted to the free mulattress, Esther, a copy of which declaration and certificate, correctly translated into the English language, is filed herewith, and marked E, and made an exhibit herein.

The plaintiff further states that on or about June 25th, 1794, the said Trudeau, lieutenant governor as aforesaid, made a concession in writing in the Spanish language, in conformity with the laws, usage, and practice of the Spanish government, of said tract or parcel of land last above mentioned to said Joseph Brazeau, a copy of which concession, correctly translated into the English language, is filed herewith, marked F, (S exh.) and made an exhibit herein.

And after said concession was made to him as aforesaid, said Joseph Brazeau took possession, and possessed and cultivated the same until he made sale of four arpents, that is to say, four arpents in width by four arpents in depth, making sixteen arpents in superfices, part and parcel of said tract of four by four arpents, to Pierre Chouteau, as hereinafter stated.

The plaintiff further states that on or about May 9, 1798, the said Joseph Brazeau, by his deed of that date, in the French language, sold and conveyed unto one Louis Labeaume sixteen arpents, part and parcel of said tract of land conceded to said Joseph Brazeau by said lieutenant governor aforesaid, the said parcel conveyed by said deed being four arpents in width by sixteen arpents in depth. But the said Brazeau reserved to himself four arpents of said tract conceded to him as aforesaid, which four arpents so reserved to be taken at the foot of the hillock in the southern part of the said four by twenty arpents conceded to said Brazeau as aforesaid, which said tract of four by four arpents of land is situated within the limits of the out-boundary line of the village of St. Louis, run in conformity to the first section of the act making further provisions for selling the claims to land in the Territory of Missouri, approved June 13th, 1812.

The plaintiff further states that after the making of said deed by Brazeau, to said Labeaume, (the precise date the plaintiff is not able to state,) the said Labeaume presented his petition to said lieutenant gov-

ernor, in the Spanish language, stating in said petition in substance, that he had purchased of said Brazeau a parcel of land which had but a very limited depth, and said Labeaume asked said lieutenant governor that he would grant to him 360 arpents of land, including that which he had acquired of Brazeau, that is to say, 20 arpents in depth from the Mississippi, ascending Rocky Branch, west quarter south by sixteen arpents front, along the Mississippi, to be taken from the descent
249 of the road into the creek, which is the same front of the petitioner's land, but no concession by the Spanish government was ever made to said Labeaume of the quantity or tract of land asked for by said petition, or any part thereof. Although, on or about February 15th, 1799, the said lieutenant governor acted upon the said petition of said Labeaume, and ordered that a survey should be made for said Labeaume of the land asked for in said petition, and that he be put into possession.

The plaintiff further states, that on or about April 10th, 1799, the Spanish government caused a survey to be made by Don Antoine Soulard, acting surveyor in said Spanish provence, for said Labeaume, and which survey was intended and ordered to be made of land that said Labeaume had asked for in his petition to the lieutenant governor above mentioned; but the said surveyor, Soulard, either by mistake or design, so made said survey as to include the whole of the four by four arpents of land which said Brazeau reserved to himself in his said deed to said Labeaume, as will more fully and at large appear by reference to said survey.

The plaintiff further states that on or about September 22d, 1810, the board of commissioners for the adjustment of land titles in the Territory of Missouri, acting upon said concession to Brazeau, his deed to Labeaume and said Soulard's survey, and in pursuance and in conformity to the laws of the United States in such cases provided, confirmed to said Joseph Brazeau's representatives four by (four) arpents of the tract or parcel of land that was conceded to him as aforesaid, by the said lieutenant governor, being the same four by four arpents which the said Brazeau and wife conveyed to said Pierre Chouteau as hereinafter stated; a copy of which confirmation is filed herewith, marked "G," and made an exhibit herein.

The plaintiff further states that the said commissioners, in pursuance of and in conformity with the laws of the United States in such cases made and provided, confirmed to said Joseph Brazeau four arpents of the tract or parcel of land that was conceded to him as aforesaid by said lieutenant governor, being the same four arpents which the said Brazeau reserved to himself in his said deed made to said Louis Labeaume, mentioned hereinbefore, and said commissioners, by the same act, confirmed 356 arpents of land to said Labeaume, a copy of which confirmation is filed herewith, marked "K," (S exh.,) and made an exhibit herein.

The plaintiff further states that the said commissioners, in pursuance of and in conformity with the laws of the United States, on or about June 14, 1811, issued their certificate in writing, numbered 983, to the effect that Joseph Brazeau's representatives then were entitled to a patent under the provisions of the fourth section of the act of Congress entitled "An act respecting claims to land in the Territory of Orleans and Louisiana, passed March 3d, 1807, for four arpents of land situated in the district of St. Louis, on the Mississippi, and ordered the same to be surveyed agreeably to a reserve made in the sale of the said Joseph Brazeau to said Louis Labeaume, a copy of which certificate is filed herewith, marked H, and made an exhibit herein.

250 The plaintiff further states that on or about July 26, 1816, the said Joseph Brazeau, and Theresa, his wife, by their deed of that date, written in the French language, conveyed all their right, title, claim, and interest in the said tract or parcel of land conceded as aforesaid to said Brazeau to Pierre Chouteau, the said Brazeau having, long before the date of this deed, agreed to sell and convey said four arpents to said Chouteau, and which deed was duly acknowledged and recorded in the recorder's office of St. Louis County on the same day said deed was made, a copy of which deed, correctly translated into the English language, is filed herewith, marked I, and made an exhibit herein.

The plaintiff further states that in the month of November, in the year 1817, by authority of the surveyor general of the United States for the district of Illinois and Missouri, the said four arpents of land reserved by said Joseph Brazeau as aforesaid, was surveyed, which survey was made by Joseph C. Brown, deputy surveyor, under the said surveyor general, a copy of which survey is filed herewith, marked T, and made an exhibit herein.

The plaintiff further states that on or about June 1st, 1826, Pierre Chouteau and wife, by their deed of that date, duly recorded in the recorder's office of St. Louis County, sold and conveyed to one George F. Strother the said four arpents of land, confirmed as aforesaid to Joseph Brazeau, or his legal representatives, describing said four arpents in said deed in substance as follows: A tract of land containing four arpents, running on the river and running back four arpents, making sixteen arpents, being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by said Brazeau to Pierre Chouteau, a copy of which deed is herewith filed, marked K, (8 exh.,) and made an exhibit herein. The plaintiff further states that on or about September 3d, 1830, the said George F. Strother, and Theodosia, his wife, by their deed of that date, which is duly recorded in the recorder's office, in St. Louis County, conveyed the said four by four arpents (making sixteen arpents in superficies) of land to John Mullanphy and John O'Fallon, in trust for the sole use, benefit, and behoof of the St. Louis Marine Railway Company, and which deed contained and has in it a clause to the effect that said Mullanphy and O'Fallon (trustees as aforesaid) shall hold said property for sole benefit of the St. Louis Marine Railway Company, and shall obey the written instructions of said company in all things relative to said premises, a copy of which deed is filed herewith, marked L, and made an exhibit herein. The plaintiff further states that some time in the month of November, 1840, the said George F. Strother departed this life, intestate, and in the month of March, 184–, Alexander Hamilton, esqr., was appointed by the probate court in said St. Louis County administrator of all and singular the property and effects of said Strother, as will appear by a copy of the letters of administration granted to him, filed herewith, marked M, and made an exhibit herein. The plaintiff further states that inasmuch as the personal property belonging to the estate of said George F. Strother
251 was insufficient to pay and satisfy the debts established against said estate, the said administrator made application to said probate court in due form of law, and obtained an order from said court authorizing said administrator to sell the real estate belonging to the estate of said George F. Strother, including in said order, among other lands, the said sixteen arpents which said Pierre Chouteau and wife conveyed to said Strother as aforesaid, and in pursuance of said order of said court, and in conformity with the laws of the State of Missouri in such cases provided, the said administrator, on or about the fourth

day of May, eighteen hundred and forty-six, offered the said sixteen arpents of land for sale at public vendue, at the court-house in said county, and at said sale the plaintiff became and was the highest and best bidder therefor, and said sixteen arpents of land, and all the right, title, and interest of the estate of said George F. Strother therein, were struck off to the plaintiff, and he thereby became the purchaser of said sixteen arpents, which sale was approved by said court. And afterwards, on the fourth day of June, eighteen hundred and forty-six, the said administrator made his deed to the plaintiff, conveying to him the said sixteen arpents, and all the right, title, and interest of said Strother therein, which deed is duly recorded in the recorder's office of St. Louis County, and a copy of which is filed herewith, marked N, and made an exhibit herein.

The plaintiff further states that on or about the 2d day of January, eighteen hundred and fifty-two, John O'Fallon, surviving trustee for said St. Louis Marine Railway Company, (the said John Mullanphy having before that time departed this life,) by the authority and direction of the said St Louis Marine Railway Company, by his deed of that date, conveyed the said sixteen arpents of land, and all the right and interest of said Marine Railway Company therein, to the plaintiff, which deed is recorded in the recorder's office of St. Louis County, and a copy thereof is filed herewith, marked O, and made an exhibit herein. The plaintiff further states that the said tract of four by four arpents of land, which was confirmed to Joseph Brazeau as aforesaid, being the same tract to which the plaintiff acquired title by the deeds before mentioned, is situate in the northern part of the city of St. Louis, and is designated and known by the description and boundaries following: Begining at an old stone set in the eastern line of the common fields of St. Louis, where said eastern boundary line intersects an old ditch, known as Labeaume's south ditch; thence from old stone eastwardly and along the line of said old ditch four arpents, to the west bank of the Mississippi River; thence northwardly along the west bank of the Mississippi River four arpents; thence westwardly on a line parallel with said old ditch first mentioned four arpents; and thence southwardly and on a line parallel with the west bank of the Mississippi River four arpents, to the place of beginning. The plaintiff further states that all the defendants respectively claim title and right to possess the parts or portions which they do respectively possess and claim of said four by four arpents of land confirmed to said Brazeau's representatives, under Louis La-
252 beaume, or his representatives; and some time on or about the twenty-fifth day of March, 1852, the defendants fraudulently and unlawfully procured a patent to be issued to said Louis Labeaume, or his legal representative, for the same four by four arpents of land, which before that had been confirmed to Joseph Brazeau's representatives as aforesaid, which patent is signed by the President of the United States, and the effect of which patent is to vest in the legal representatives of said Louis Labeaume, who are the defendants, the legal title of said four by four arpents confirmed to said Brazeau's representatives as aforesaid. The plaintiff further states that at the time said patent was issued to said Labeaume's representatives, the equitable right and claim to said four by four arpents of land confirmed to said Brazeau's representatives as aforesaid were vested in the plaintiff in virtue of his purchase thereof, and the several deeds of conveyance hereinbefore mentioned; and the defendants, when they procured said patent to be issued to said Labeaume's representatives as aforesaid, had full knowledge and notice of the plaintiff's said equitable right and claim to said plaintiff's

four by four arpents of land. The plaintiff further states that when the defendants acquired their several supposed or pretended rights or interests in, or to, said four by four arpents of land, they and each of the defendants had full notice and knowledge of the equitable right and claim of said Joseph Brazeau, and his legal representatives, to said four by four arpents of land; and the plaintiff avers that he is the representative of said Joseph Brazeau in respect to said four by four arpents of land, and that he, the plaintiff, is rightfully and equitably entitled thereto; the plaintiff further states that the said tract of four by four arpents of land, which was confirmed as aforesaid to Joseph Brazeau's legal representatives, was, at the time of the said confirmation thereof, definitely located by specific metes and bounds, corresponding substantially, in all respects, with the location and metes and bounds hereinafter stated by plaintiff in his description and designation of the four by four arpents of land which he claims under and as the legal representative of said Joseph Brazeau.

The plaintiff further states that the several defendants named in this petition either claim title to, or are in possession of, the said four by four, or sixteen arpents of land, reserved as aforesaid by said Brazeau, to the extent and in the particulars following, to wit: The defendant, Mary L. Tyler, claims title as the only child and heir of said William Chambers, deceased, lots 48, 46, and 51, and fractional lot 6, in block 292; also, lots 44, 52, and 54, in block 293. The defendant, Mary L. Tyler, also claims, as devisee of her late husband, Robert Tyler, in trust for her children, who are also defendants, an undivided interest or estate in lots 4 and 6, in block 289, and lots 103, 104, 105, 112, 113, and 114, in block 321.

The defendant Robert Dodd is the tenant of said Mary L. Tyler, and in possession of fractional lot 6 and lot 48, in block 292. The defendants, A. B. Stone, G. B. Boomer, and L. B. Boomer, are the tenants of said Mary L. Tyler, and in possession of lot 51, in block 292, and lot 52, in block 293.

253 The defendant Seaborn Miller is the tenant of said Mary L. Tyler, in *in* possession of said lot 46, in block 292.

The defendant James Patterson is the tenant of said Mary L. Tyler, and in possession of lots 4 and 6, in block 289, and lots 44 and 45, in block 293, and lots 103, 104, and 105, in block 321; and said Mary L. Tyler is in possession herself of lots 112, 113, and 114, in block 321. The said Mary L. also claims title through her trustees, James Guthrie and William Chambers, (the latter being a son of James Chambers,) fractional lot A, and lots 1, 2, and 3, in block 288, and the defendant, Daniel A. Rawlings, is her tenant, and in possession of the last-named lots.

The defendants James Guthrie and William Chambers have no other claim or interest, as far as the plaintiff knows or believes, except that they hold said fractional lot A, and lots 1, 2, and 3, in block 288, in trust for said Mary L. Tyler.

The defendants Isaac H. Sturgeon and Thomas L. Sturgeon claim the south half of block 294, and the defendants, John Brotherton and John B. Gibson, are their tenants, in possession of said last-mentioned lots; the defendant, Louis A. Labeaume, claims title to fractinoal lot L, and lot 49, in block 292, and the defendant, Shaffey, is his tenant, in possession of said lot.

The defendant John R. Shepley claims title to lot 45, in block 293, and the defendants, A. B. Stone, G. B. Boomer, comprising the firm of Stone, Boomer & Co., are his tenants, in possession of said lot. The

defendant, Edward D. Hobbs, claims title to lot 53, in block 293, and said defendants, Stone, Boomer & Co., are his tenants, and in possession of the same.

The defendant Thomas A. Dryden claims title to lot 53, in block 293, and the defendant, James Patterson, is his tenant, in possession of said lot.

The defendant Joseph Templeton claims title to lot 102, in block 320, and he is in possession thereof.

The defendant Marshall Brotherton claims title to lot 115, in block 350, and the defendant, George W. Sparhawk, is his tenant in possession thereof.

The defendant Calvin Case claims title to lot 116, in block 320, and he is in possession thereof.

The defendant Benjamin F. Jennings claims title to 30 feet of lot 106, in block 322, and the defendant, Mark C. Jennings, is his tenant in possession thereof.

The defendant Harriet M. Dean claims titles to lots 107 and 108, and fifty feet of lot 106, in block 322, and the defendant, Joseph Dennis, is her tenant, and in possession of said lots.

The defendant Joseph Cochran claims title to twenty feet of lot 5, in block 289, and the defendant, James Patterson, is his tenant in possession thereof.

The defendants James Byrne and William L. Ewing claim lot 7, in block 290, and they are in possession thereof.

The defendants Harriet E. Dean, Matilda N. Taylor, Edwin B. Smith, and Virginia M., his wife, Susan P. Christy, George W.
254 Goode, and Francis S. M. Goode, his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, David D. Mitchell, jr., and Susan P. Mitchell, Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton, and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow, and Mary F., his wife, Theodore P. Green, and William F. Wright, trustees of said Mary F. Glasgow, Martha A. Wills, Thomas A. Wright, and John C. Wickham, trustees of said Martha A. Wills, and Orleana C. Shaumburg claim title to lots 47 and 50, in block 292, and the defendant, Benjamin Vice, is their tenant in possession of the said last-mentioned lot.

The defendant William C. Tyler, as devisee of his father, Robert Tylea, claims and undivided interest and estate with his sisters, who are also defendants, in lots 103, 104, 105, 112, 113, and 114, in block 321, and in lots 4 and 6, in block 289.

The defendants William C. Tyler, Mary L. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, and Fanny J. Tyler, and Roberta Tyler are children of said Robert Tyler, and are interested in the same property before mentioned, which was devised by said Robert Tyler to said Mary L. Tyler, as before stated, and the last named children of said Robert Tyler, as the plaintiff has been informed and believes, are now infants under the age of twenty-one years.

The def't Margaret, wife of Alfred Dryden, Elizabeth Gordon, Minerva Gordon, and Mary Gordon, are children of James Gordon, deceased, and as heirs or devisees, his said children claim title 60 feet of lot 5, in block 289, and lot 43 in block 293, and the defendant, James Patterson, is their tenant in possession thereof.

The defendants Louisa R. Brown, James B. Brown, Laura H. Brown, Mary Ann Lakenan, and James R. Lackland, are the heirs and legal representatives of Lewellyn Brown, late of St. Louis county, deceased, and the said heirs and representatives of said Lewellyn Brown claim

title to lot 101, in block 320, and the defendants, John Brotherton and John B. Gibson, are their tenants and in possession of said last-mentioned lot.

The plaintiff further states that since the institution of this suit Calvin Case has departed this life, leaving as his only heirs-at law, George Case, his son, and his daughter, Adelaide, who is now the wife of George C. Hardcastle, who are made defendants herein. The plaintiff further states that since the institution of this suit Thomas A. Wright has departed this life, leaving as his only heirs-at-law, Mary H. Glasgow, William F. Wright, Martha A. Wills, and Orleana C. Schaumburg, who are defendants herein. The plaintiff further states that the defendants claiming title and possession, as above stated, have combined and confederated together, and are now combined and confederated together for the purpose of keeping him out of possession, and for the use and enjoyment of said four by four arpents of land, and they have hitherto, by their acts, combinations, and confederacy aforesaid, hindered and prevented the plaintiff from having, possessing, using, or enjoying said four by four arpents, or any part thereof; and the defendants now
255 combine and confederate together for the purpose of keeping the plaintiff out of possession of said land, and to prevent him from getting possession thereof; and they have hitherto and do now prevent the plaintiff from taking or holding possession of said land; all which actings and doings, on the part of the defendants, are contrary to equity and good conscience, and cause great damage and injury to the plaintiff; and the plaintiff alleges that the damage and injury which he has sustained, by being kept out of possession of said land, and being deprived of the use *of* thereof, is equal to the sum of $25,000, and that the total value of the whole of said four by four arpents of land, at the time of exhibiting the petition, set down at a fair and reasonable estimate, is the sum of $350,000; and the plaintiff further *further* alleges, that the defendants, while they have held possession, used and enjoyed said four by four arpents of land, have realized and received large rents, profits, benefits, and advantages from the use of said land, and which rents, profits, benefits realized and received as aforesaid, by the def'ts, and advantages are of the value of $20,000, and for which the defendants should account to the plaintiffs. Wherefore, and to the end that said equity and justice may be meted out to the plaintiff, and that he may be protected and established in his just rights, the plaintiff asks judgment in his case, as follows:

First. That this court, by its judgment and decree, divest out of the defendants, or out of all those who claim to have or to hold any title or right in or to said four by four arpents, (or sixteen arpents superficies;) that said Joseph Brazeau, reserved to himself in his said sale and deed to said Louis Labeaume, and that the right or interest, in said land held or claimed by the defendants, or either of them, be, by the judgment and decree of this court, vested in the plaintiff.

Second. That, by the judgment and decree of this court, the defendants be required to surrender and yield possession of said four by four arpents of land, or so much and such part or parts thereof as they or either of them may claim, possess, or occupy, to the plaintiff, and that he, the plaintiff, may, by the judgment, order, and process of this court, be put into possession of said land.

Third. That, by the judgment and decree of this court, the defendants may be required to account for and pay over to the plaintiff all the rents, profits, and advantages, and benefits which the defendants

have realized, and received from the possession and use of said land, and that a just and proper account thereof be ordered and stated.

Fourth. That, by the judgment decreed, restraining order of this court, the defendants, their agents, and servants, may be enjoined and restrained from committing waste and injury to said land and premises.

Fifth. That, by the order, judgment, and decree of this court, the plaintiff have such other and further relief in the premises as to the court may seem meet and equitable.

KRUM & HARDING,
Attorneys for Plaintiff.

256 John Magwire, the plaintiff, makes oath and says, that the foregoing petition and the matters therein stated he believes to be true.

JOHN MAGWIRE.

Subscribed and sworn to before me this 12th day of March, 1858, as witness my hand and seal, at office, the day and year last written.

E. W. DECKER,
Notary Public.

And afterwards, the following proceedings were had in this cause, to wit:

Answer to amended petition.

SATURDAY, *March* 13, 1858.

JOHN MAGWIRE
vs.
MARY L. TYLER, WILLIAM C. TYLER, MARY S. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith, and Virginia M., his wife, Susan P. Christy, George W. Goode, and Frances S. M., his wife, David D. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton, and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow, and Mary H., his wife, Theodore P. Green, and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden, and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel R. Rawlings, Thomas Shaffey,

John Brotherton, John B. Gibson, Geo. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, E. B. Boomer, L.
257 B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, Orleana C. Schaumburg, George Case, George P. Hardcastle, and Adelaide, his wife, defendants.

Which answer is in the words and figures following, to wit:

In the St. Louis land court of March term, 1858.

JOHN MAGWIRE
vs.
MARY L. TYLER AND OTHERS, defendants.

The said defendants, each answering for himself or herself, severally answer the plaintiff's petition, and each state, severally, as follows: That the premises in controversy are situate on the river Mississippi, about four arpents north of the Big Mound, a most noted monument in St. Louis, called by the French La Grange de Terre, (Earthen Barn.) This mound is an artificial erection, situate on the brow of the first bank of the prairie west of the bank of the said river, at the distance of about 28 arpents north of the northern wall of the fortifications of the old Spanish town of St. Louis, and about four and a half arpents west from the bank of the river. The bank on which the mound stands is the eastern boundary of the Grand Prairie, covered by the St. Louis common fields, and the land descends with a gentle slope from the brow of it to the small prairie or bottom land between it and the river. This bank of the prairie is about 4½ arpents west of the river bank, where the mound stands, and about sixty feet above the level of the prairie along the river, and it runs nearly parallel with the river, at that distance from it, for a mile or more towards the south; at the north foot of the mound, the bank of the prairie curves towards the northwest, and running to the southwest corner of the southern and western ditches of Labeaume, as marked on the Spanish survey of Labeaume's concession in seventeen hundred and ninety-nine, it thence runs about sixteen arpents northwardly, parallel with the river, at the distance of about seven arpents from the bank of the river, where it becomes broken and the land descends more or less abruptly into a small creek called the Rocky Branch, about 25½ arpents north of the mound; south of the Big Mound, about eighteen arpents distant, there are small mounds on the same bank of the prairie.

The bank of the prairie is higher where the Big Mound stands than at any other point between the old town of St. Louis and the Rocky Branch. The first Spanish grant north of the town of St. Louis, on the Mississippi River, was made to Esther, a mulattress, in October, 1793, by the following description:

258 "The north part of the present concession shall be situated between the hillock named the Earthen Barn and the banks of the Mississippi; thence descending the said river as far as the complement and extent of twenty arpents in length," &c.

This description locates the north line of Esther between the Big

Mound and the river, and the call for quantity is to the extent of 20 arpents south of that point on the river. The second Spanish grant on the river north of the town was made in June, 1794, to Joseph Brazeau, under whom the plaintiff claims. Brazeau petitioned for land beyond the foot of the mound called the Earthern Barn, of the width of four arpents, &c., and the grant to him was four by twenty arpents "from the foot of the hill where the Earthen Barn is situated; thence up to the environs of the Rocky Branch," &c. No Spanish or United States survey has ever been made of either of these grants, but Esther and Brazeau took possession of their respective tracts of land so granted, the one south of, and the other north of the Big Mound; Esther possessed, as the land granted to her, that portion which laid south of the Big Mound, between it and the small mounds, embracing the little prairie between the bank of the prairie and the river Mississippi; and Brazeau possessed, as the land granted to him, the little prairie north of the Big Mound, along the river. He cultivated fields up to the foot of the Big Mound, and built a lime-kiln on the bank of the river, about 2¼ arpents north of said mound. The Big Mound was the great natural monument that designated the division line between the possession of the two parties, Esther and Brazeau, in Spanish times.

On the second of September, seventeen hundred and ninety-four, Esther conveyed her interest in the grant to her to Jacque Clamorgan, her lord and master, by deed, and Joseph Brazeau was a subscribing witness thereto. In August, 1797, the Esther grant was annulled by the lieutenant governor, for the reason that the delay granted to begin improvements had expired, and a grant of 600 feet square was made at the same time to Antoine Roy upon the same land; that is upon the southern portion of Esther's grant. (See Roy's grant.) When Soulard, the Spanish surveyor general, was about to survey the Roy tract, he notified Clamorgan, as the owner of the Esther grant, according to the Spanish custom, and Mr. Clamorgan formally claimed "that the ground on which he was operating had been granted to him for a number of years." The southwest corner of the Roy tract is 19 arpents south of the north foot of the mound, and about 23 arpents south of Labeaume's south ditch. On the 9th of May, 1798, Brazeau sold by deed 4+16 arpent of his tract to Louis Labeaume, under whom defendants claim, and reserved his fields and lime-kiln, near the Big Mound. The descriptive words of the deed are, "which consists of four arpents of land to be taken from the foot of the hill or mound commonly called La Grange de Terre, the earthern barn, by twenty arpents in depth, bounded by the Rocky Branch at the extremity, which is opposite the said mound;
259 east by the Mississippi River, and west by the King's domain; the said Brazeau reserving to himself four arpents of land from the foot of the mound in the south part of the tract." This deed was executed before the lieutenant governor, who officially certified to the sale. The confirmation under which the plaintiff claims was void, the board of commissioners, in eighteeen hundred and ten, having no jurisdiction of Brazeau's claim, for want of notice thereof to the recorder of land titles by Brazeau. Labeaume, after said purchase of Brazeau, immediately enclosed the land with enbankments of earth and ditches, the height of the embankments, from the bottom of the ditches, being about six feet, and on the top of the embankments pickets were driven into the ground, so as to make a stockade enclosure. He also erected houses upon the grounds, inclosed and lived there with his family, from 1798 until 1814, and left his agent in possession from that time until

1816, when he sold to William Chambers. The north and south ditches of Labeaume were 16 arpents and forty French feet apart. Brazeau's lime-kiln was 300 feet south of south ditch of Labeaume, and he worked that kiln, and cultivated fields south of the ditch up to the time he sold to Labeaume, and after the sale he rented the kiln to one Prineau.

It appears from a deed made by Brazeau to Pierre Chouteau, in 1816, that at the time of the deed to Labeaume of 1798, Brazeau had made a verbal sale of the 4 by 4 arpents at the foot of the mound to Pierre Chouteau. (See deed referred to.)

In February, 1799, Labeaume asked for a grant of 360 arpents "of land, including the part which he had acquired of Brazeau, that is to say, 20 arpents in depth from the Mississippi, along the Rocky Branch, west one-quarter south, by 16 arpents front, along the river, to be taken from the descent of the road into the branch, which is the very front of the petitioner's land; the angle formed by the line perpendicular from the road to the river will nearly complete the land demanded by the petitioner, &c." (See petition and grant referred to.)

On this petition the same lieutenant governor who certified to the Brazeau reservation ordered a survey the 17 February, 1799, and on the second of March, 1799, Don Antonio Soulard, Spanish surveyor of Upper Louisiana, made the survey in the presence of the adjoining neighbors, according to the Spanish custom, and returned the plat and notes of survey, which were duly recorded in the archives of the government 15th of April, 1799.

On Soulard's survey the ditches are marked, and the houses of Labeaume, and the quantity of land surveyed was 374 arpents. The south ditch of Labeaume is 4 arpents and 20 French feet north of the north foot of the Big Mound, at a point 4 arpents west of the river. The reservation of Brazeau, by his deed of 4 by 4 arpents on the Mississippi from the foot of the Big Mound, locates it south of and adjoining the southern ditch of Labeaume. In February, 1806, Labeaume filed his claim for confirmation, under the act of Congress of the 2d of March, 1805, as follows:

Louis Labeaume (claimed) 374 arpents of land, conceded in
260 part to Joseph Brazeau, the 20th June, 1794, and the other part to Louis Labeaume the 15th February, 1799, settled and cultivated since both these dates. Under this claim he filed the following paper evidences of titles, pursuant to the act of Congrees, and they were duly recorded by the recorder of the land-titles, to wit:

1st. The petition of said Brazeau for 4 by 20 arpents.

2d. The order of survey of Zenon Trudeau, lieutenant governor, thereon.

3d. The grant to Brazeau of 4 by 20 arpents.

4th. The certificate of the sale of 4 by 20 arpents to Labeaume, with a note of the reservation of 4 arpents written on the grant by the lieutenant governor, as follows:

"I do certify that the above concession, except 4 arpents, has been sold, &c., to Louis Labeaume, by deed, proven before us, the 9th May of this year, and deposited in the archives of this post.

"St. Louis, of Illinois, the 12th day of May, 1798.

"ZENON TRUDEAU."

5th. The petition of Labeaume for an extension of the 16 arpents front purchased of Brazeau, 20 arpents west, and for the angle of the Rocky Branch, about 360 arpents.

6th. The order of survey by Trudeau to Soulard.

7th. The survey by Soulard of 374 arpents, and his plat thereof for Louis Labeaume.

On the presentation of this claim on the foregoing papers, the clerk, who read the certificate annexed to the grant to Brazeau, supposed the 4 arpents reserved were within Foulard's survey of 374 arpents, and he entered in the minutes that Labeaume's grant included the whole of the Brazeau grant. This was a mistake of the clerk, who did not have the Brazeau deed before him, but only the governor's certificate. Mr. Labeaume abandoned all claim under the Brazeau grant, and demanded a confirmation directly under the one to himself, the Soulard survey. The board, upon proof of possession, in 1800, by Labeaume, and that he was the head of a family, confirmed to him 356 arpents, and 4 arpents to Joseph Brazeau, and ordered that the same be surveyed, agreeably to a concession from Zenon Trudeau to Louis Labeaume, and as respects the 4 arpents, agreeably to a reserve made in a sale from Brazeau to Labeaume, recorded in Book C, page 339, of the recorder's office. This confirmation was made 22nd September, 1810, and confirmation certificates were duly issued, one to Labeaume, and one to Brazeau. Brazeau at the time of this confirmation to him did not own, or claim to own, the said reservation. He had sold it to Pierre Chouteau, who had included the whole of it in a larger grant made to him by an order of survey of October, 1799, surveyed the 17th June, 1803. In P. Chouteau's petition of 1799, he asked for the land bounded north by the line of Mr. Labeaume's tract, south by line of Mr. Antoine Roy's tract, east by the river, and west by the domain of His Majesty.

Chouteau was the owner of the Brazeau reservation at the time
261 of the Soulard survey of Labeaume's tract. In June, 1803, when Chouteau's grant was surveyed by Soulard, the parties, Labeaume and Chouteau, were present, and Labeaume' south ditch was marked upon the plat as a part of the north line of Chouteau's tract, and the surveyor returned his plat of boundaries, stating thereon that Chouteau's tract was bounded north by the land of Louis Labeaume. (See grant and survey.) This confirmation to Brazeau, under which plaintiff claims, is null and void. The board had no jurisdiction over the Brazeau Case, and no notice had been filed by Brazeau, or any one for him, for the confirmation.

Pierre Chouteau procured a confirmation in 1809, from the same board of commissioners, for the land between Labeaume and Roy. He purchased the Esther claim of Clamorgan in 1810, and procured the formal title of the reservation from Brazeau in 1816 by deed, which described the reservation three times "as land to be taken from the foot of the mound called the Eastern Barn." (See deed from Brazeau to Chouteau.) In 1817, Rector and Barcroft entered for Henry Peyroux all the land south of Labeaume's south ditch, including the reservation, and all of Pierre Chouteau's tract, under a New Madrid earthquake certificate, No. 184. Pierre Chouteau, on the 20th of May, 1826, protested in writing to the Commissioner of the General Land Office against the issuing of a patent on said certificate, that it covered the whole of a small tract of sixteen arpents, which he had purchased from a Mr. Joseph Brazeau, to whom it had been confirmed by the board of commissioners. This is a solemn act of location, by Chouteau, of the reservation south of Labeaume's tract. Chouteau conveyed the reservation to Strother in June, 1826; Strother's administrator to John Magwire, in June, 1846; and Magwire founds his suit on this title through Pierre Chouteau. The plaintiff has no conveyance from Brazeau for any land

north of the south ditch of Labeaume. If Brazeau's grant was included within Soulard's survey for Labeaume, then Mr. Brazeau located his reservation in the wrong place. But if the mistake in the deed from Brazeau to Labeaume be admitted, and if he located his reservation at the foot of the mound, when he intended to locate it north of the south ditch of Labeaume, it is too late to re-locate now, for the title of Brazeau passed to Labeaume in 1798 for the whole of Brazeau's tract, excepting only the 4 by 4 arpents at the foot of the mound. If Brazeau had no land where he reserved these 16 arpents, he, or Chouteau, his vendee, should have proceeded to correct the mistake in the deed of 1798 during the time Labeaume held the title. But Labeaume held possession, according to the terms of his deed and Soulard's survey, for eighteen years, when he sold the whole tract of 374 arpents to William Chambers, by deed of April, 1816, for $7,460, a full consideration, and Chambers had no notice of the alleged mistake in the location of Brazeau's reservation, and he was not put upon inquiry by the title-papers; and he was an innocent purchaser for a valuable consideration of the tract embraced within the Soulard survey. Up to the purchase by Chambers, the grantor of the defendant, there never had been any claim by Joseph Brazeau or
262 Pierre Choteau for the location of the reservation north of the south ditch of Labeaume. From 1799 until 1823 Mr. Chouteau had acquiesced in the possession of Labeaume to the south ditch, which ditch was established by the surveyor general of the Spanish provence of Upper Louisiana, in March, 1799, as the division line of a stockade fence between Labeaume's land and Brazeau's reservation, and this is an estoppel against Pierre Chouteau, and all persons claiming under him, including the plaintiff. In October, 1799, Mr. Chouteau, in his petition to the lieutenant governor, recognized the ditch and stockade fence of Labeaume as the boundary between Labeaume and himself, and he called the land north of that boundary Labeaume's land. In June, 1803, Mr. Chouteau's survey of his grant was made by the same surveyor in his presence, and in the presence of Labeaume, when the stockade fence or ditch of Labeaume was again officially recognized and established as a division fence between Labeaume and Chouteau. For fifty-four years prior to this suit Labeaume and Chouteau, and their grantees, have possessed their land; the one south of, and the other north of, the line of this stockade fence and ditch, as recognised and established as the boundary line between their respective tracts. And these defendants further state that, by the said recognition of the south ditch of Labeaume as the boundary line between the lands of said Pierre Chouteau and Louis Labeaume for so long a period of time, they, the said Pierre Chouteau and Louis Labeaume, and all persons claiming through or under them as parties or privies, are mutually bound and estopped from disputing the same, or claiming adversely thereto, and that the long possession of said parties and their privies of the said several tracts of land, in accordance therewith, has vested a complete title in the said representatives of Louis Labeaume to the land in the United States survey No. 3333. These defendants aver that the said southern ditch was dug for the purpose of making an embankment on the northern margin thereof, to serve as an inclosure, and on the top of said embankment pickets were driven into the ground, so as to make a stockade inclosure of that part of Louis Labeaume's tract. Defendants deny that the survey by Soulard of 1799 for Labeaume included any part of the four by four arpents reserved by Brazeau in his deed to Labeaume of 1798. Defendants deny that the proper or true location of said four by twenty arpents of Joseph Brazeau was or is as stated in

the plaintiff's petition; but, on the contrary thereof, the location of the southern part of said Brazeau's tract was truly given by the said United States survey No. 3332. Defendants deny that Louis Labeaume ever recognised the right of a proprietorship of said Joseph Brazeau to said sixteen arpents of land known as Brazeau's reservation at any other place than was located by said United States survey No. 3332 for Joseph Brazeau's legal representatives, and the possession of said Brazeau, and of Pierre Chouteau, his grantee of said reservation, was in accordance with said United States survey No. 3332, and the said Labeaume always claimed the land within Soulard's survey
263 and the survey of the United States No. 3333 as the land belonging to him.

Defendants aver that said land north of Labeaume's ditch was always held in possession by actual possession, and by notorious acts of ownership on the part of Chambers, Christy, and Wright, and their representatives and grantees, from and after the year 1816 until the year 1846, continuously, and adverse to all other persons.

These defendants deny that the said deed of the 26th day of July, 1816, conveyed the said Brazeau tract to said Pierre Chouteau, or any part thereof north of said southern ditch of Labeaume; but, on the contrary thereof, the said deed only purports to convey four arpents by four arpents at the foot of the Big Mound, south of said southern ditch of Labeaume.

These defendants deny the said survey of 1817 was made by authority of the surveyor general of the United States for the district of Illinois and Missouri. And they deny that the said four by four arpents of the Brazeau reservation were surveyed under said alleged survey of 1817. And these defendants aver that said survey of 1817 was not made pursuant to any lawful instructions; and they further aver that the said survey was never approved according to law; but, on the contrary thereof, the said survey was signed by the said surveyor general by mistake, and the same was annulled and disproved, and never held or regarded as a valid or binding survey by the United States.

These defendants deny that the said deed of the first of June, 1826, from Pierre Chouteau and wife to George F. Strother, conveyed any land north of the southern ditch of Louis Labeaume.

And they deny that the said deed of George F. Strother and wife to the trustees of the Marine Railway Company conveyed any land north of the southern ditch of Labeaume.

Defendants have no knowledge or information sufficient to form a belief whether the property, personal, belonging to the estate of said George F. Strother, was insufficient to pay and satisfy the debts established against said estate, nor whether said administrator made application to said probate court in due form of law, and obtained an order from said court authorizing said administrator to sell said real estate as alleged, nor whether said Brazeau's reservation, located as claimed by plaintiff, was included therein, nor whether said premises in question were sold in conformity with law, as stated in plaintiff's petition.

Defendants deny that the plaintiff acquired the right, title, and interest of the Marine Railway Company in and to the premises in question, by deed of the 2d day of January, 1852, as alleged; and defendants have no information or knowledge sufficient to form a belief, whether the said John O'Fallon was authorized in due form of law, by the said Marine Railway Company, to convey the said premises in question to plaintiff. These defendants deny that the said tract of land, alleged to have been confirmed to Joseph Brazeau, and to have been acquired by plaintiff, is

designated or known by any such description or boundaries as are
264 set forth in plaintiff's petition; but, on the contrary thereof, it is well known as four by four arpents at the foot of the mound called La Grange de Terre, bounded north by the southern ditch of Labeaume's tract, and east by the river Mississippi. These defendants deny that they ever fraudulently or unlawfully procured a patent to be issued to said Louis Labeaume's legal representatives for any land or for any part or the whole of said four by four arpents of land, alleged to have been confirmed to Joseph Brazeau's representatives; and these defendants deny that said four by four arpents of land, conveyed to Pierre Chouteau by said Brazeau, is within said patent to said Louis Labeaume, or his legal representatives; and these defendants deny that said patent rests in the representatives of Louis Labeaume the legal title to any part of said four by four arpents described in said deed from Brazeau to Chouteau, or any part of the four by four arpents described in the deed from Brazeau to Labeaume, and referred to in the alleged confirmation to Brazeau. These defendants deny that, at the time said patent was issued to Labeaume's representatives, any equitable right or claim to any land, within the boundaries of said patent, were vested in the plaintiff by virtue of any purchase or any deed of conveyance hereinbefore mentioned; and these defendants deny that at the time when the said patent was issued to Labeaume's representatives, they, or either of them, had any knowledge or notice of the plaintiff's pretended equitable right or claim to said four by four arpents of land, as alleged by plaintiff. These defendants severally deny that at the time they, or either of them, severally acquired their several rights or interests in or to said four by four arpents of land, they, or either of them, had any notice or knowledge of any equitable right or claim of said Joseph Brazeau, or his legal representatives, to the whole or any part of said four by four arpents of land, as lying within the boundaries of Labeaume's patent. These defendants deny that said plaintiff is the legal representative of said Joseph Brazeau as to any land within Labeaume's patent. And these defendants deny that plaintiff is rightfully or equitably entitled to any land within Labeaume's patent. These defendants deny that the said tract of four by four arpents of land confirmed, as alleged, to said Brazeau, was ever definitely located as claimed by plaintiff within Labeaume's patent, or elsewhere, except at some point south of the southern ditch of Labeaume.

These defendants deny that said Daniel A. Rawlings is the tenant of Mary L. Tyler, in possession of said lots 1, 2, and 3, and fractional lot (A), in block 288, and aver that said plaintiff fraudulently procured the tenants of William Chambers, before his death, to attone to him, the plaintiff, and fraudulently procured possession of said block of ground, some time in the year eighteen hundred and forty-nine. These defendants aver that under said confirmation to Louis Labeaume, and pursuant to the certificate of confirmation thereon, an United States survey of said confirmation was duly made and approved by the surveyor general of Illinois and Missouri, in 1852; and the said survey was duly certified to the re-
265 corder of land-titles, and he issued a patent certificate thereon, and thereupon the United States duly issued a patent pursuant to said survey to Louis Labeaume and his legal representatives, and said survey and patent include the premises sued for by the plaintiff, and the defendants severally derive their title to the said premises from and through said Louis Labeaume. These defendants farther aver that, under the said alleged confirmation to Joseph Brazeau, and pursuant to the certificate of confirmation thereon, an United States survey of said Brazeau's confir-

mation was made and duly approved by the surveyor general of Illinois and Missouri, in eighteen hundred and fifty-two; and said survey was duly certified to the recorder of land-titles, and he issued a patent certificate thereon; and thereupon the United States duly issued a patent pursuant to said survey of Joseph Brazeau, and his legal representatives, and said survey and patent, under the said confirmation, do not include the premises in controversy, or any part thereof. And the defendants aver that the said patent to the said Joseph Brazeau, or his legal representatives, was duly forwarded to the recorder of land-titles, to be delivered to the legal representatives of Joseph Brazeau, and that the same was demanded, by one of the legal representatives of Joseph Brazeau, of the said recorder of land-titles, but the same was refused to be delivered; and although the said Brazeau patent has been introduced in evidence in two actions, one wherein John Magwire was plaintiff against Vice, and one wherein Edward M. West was plaintiff, and Joseph Cochran was defendant, yet the said patent of the remaining in the hands of the said recorder of land-titles for about six years, has been lately ordered by the Commissioner of the General Land Office to be returned to Washington, upon the false pretense that no one of the representatives of Brazeau would receive the same. Defendants aver that said United States survey of said respective confirmations are conclusive evidence of the location of each of said tracts, and concludes both the plaintiff and defendants; that the confirmation of each of said tracts was subject to the condition of survey, and that each of said patents are conclusive evidence of the location of each tract embraced therein, in strict accordance with the confirmation, and is binding upon the United States, the plaintiff, and all other persons.

Defendants further avers that plaintiff conveyed the whole of said Brazeau reservation, lying south of the said southern ditch of Labeaume, to Louis V. Bogy, by deed dated the sixth day of June, eighteen hundred and forty-six, which deed is herewith filed as an exhibit.

Defendants aver that the location, as given by said surveys Nos. 3333 and 3332, and the said patents, are true and correct locations of said two tracts of land under the said confirmations.

Defendants aver that the pretended confirmation to Joseph Brazeau was wholly void for want of jurisdiction in the board, and that no title for any land could pass to Brazeau thereunder, and that the patent vests the only title ever granted to him for Brazeau's representatives, or his legal representatives, by the government of the United States.

266 Defendants further aver that William Chambers, William Christy, and Thomas Wright, were innocent and bona-fide purchasers, for a full, fair, and valuable consideration, of the said Labeaume tract and the land included within the survey of Don Antoino Soulard, of 1799, which is identical with the United States survey No. 3333; that they had no notice of the pretended claim of Brazeau for said sixteen arpents of land within the said Soulard survey; and the defendants are in like manner innocent and bona-fide purchasers, and representatives of said Chambers, Christy, and Wright. And the defendants, and those under whom they claim, have been in the actual adverse and continuous possession of the premises sued for for more that twenty years next before the commencement of this suit.

Defendants further aver that the plaintiff is bound and precluded from claiming or having the relief prayed for, by reason of the great lapse of time since the alleged error in the location of said Brazeau's reservation, and by the great lapse of time since the same was discovered by the plaintiff.

Defendants further aver that the title to the sixteen arpents front by four arpents in depth, acquired by Labeaume in seventeen hundred and ninety-eight, under the deed of Joseph Brazeau to him, was a just title; that the said deed gave a title capable of transferring the property, and that said Brazeau was then resident in the town of St. Louis, where said land was situated, and continued so to reside therein for more than ten years thereafter; that the said Labeaume, immediately after said deed was executed, dug the said ditches and made the said embankments, and put pickets thereon, and thereby enclosed the premises in question sued for, and held the same as his own, so inclosed, and lived thereon for more than ten years successively, prior to the first day of January, eighteen hundred and sixteen; whereby the said Labeaume acquired all the right, title, and estate of said Brazeau by the Spanish law of prescription then in force in the Territory of Missouri and the Territory of Upper Louisiana. And these defendants deny all confederacy and all combination for the purpose of keeping plaintiff out of possession of said premises, or for any purpose. And these defendants deny having hindered or prevented the plaintiff from having possession, using, or enjoying the said land in any manner otherwise than they would hindered any person without any right or title from taking possession of their property, of which they, and those under whom they claim, have been possessed for more than half a century. And these defendants admit that they will hold the said land, and the possession thereof, against the plaintiff. Defendants severally deny that the plaintiff has sustained any damage by reason of the premises, and they have no knowledge or information sufficient to form a belief what the rents and profits of said premises in the aggregate would amount to. And these defendants, as to each averment in plaintiff's petition in any manner in conflict with any allegation in this answer, say: that they deny such averment, and to each of said instruments of writing referred to, or mentioned in this answer, which are not made exhibits in the plaintiff's petition, these defendants are ready and offer to
267 produce to the court, whenever so directed, all the originals within their control and certified copies of all others.

And these defendants further aver that this court has no jurisdiction over the location of Brazeau's confirmation after survey thereof by the United States; and defendants aver that the United States should be a part to such action, in order to give any court jurisdiction thereof; and these defendants, having fully answered, ask for judgment and their costs.

BRITTON A. HILL,
Attorney for Defendants.

Oath of defendants waived by plaintiff, and this answer to amended petition may be filed instanter.

MARCH 13, 1858.

The affidavit to the answer of any one of the defendants is sufficient.
K. & H.

COUNTY OF ST. LOUIS, *ss:*

Isaac H. Sturgeon, one of the defendants in the above-entitled cause, being duly sworn, says that he believes the foregoing answer and the matters therein as stated are true.

ISAAC H. STURGEON.

Sworn to and subscribed before me this 13th day of March, 1858.
St. Louis, Mo.

FRANCIS M. RAWLE,
Notary Republic.

And afterwards the following further proceedings were had, to wit:

Stipulation.

In the St. Louis land court.

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

SATURDAY, *April* 24, 1858.

It is stipulated and agreed, by and between the parties to this suit, that on the hearing and trial of this cause, either party may read in evidence so much of the testimony taken and filed by the reporter in the suit of John Magwire against Benjamin Vice, in the St. Louis court of common pleas, as may be competent and irrelavant. The said evidence is the same that is contained in transcript of said case of Magwire vs. Vice, on appeal from said court of common pleas to the supreme court of Missouri. Either party may object to the competency or relevancy of said testimony with like effects as if the witness whose testimony is therein reported were upon the stand. But no objection shall be made as to the form in which said testimony is taken and presented, nor that it was not given in this case. Any documentary evidence used on the trial of said case of Magwire vs. Vice, if preserved in the record in the supreme court of said case, may be read from such record by either party, if so desired by either party, subject to all legal objections by either party for incompetency, but not as to any matter of form.

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April 12, 1858.

KRUM & HARDING,
Att'ys for Pl'ff.
B. A. HILL,
Att'y for Def'ts.

And afterwards the following proceedings were had in this cause, to wit:

Jury waived.

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL. } Trial begun.

MONDAY, *May* 24, 1858.

Now, at this day, comes said parties by their respective attorneys, and, no jury being required by either party, this cause is submitted to the court upon the amended petition, answer thereto, evidence and proofs adduced, and the argument of counsel; and the court, having heard and not being fully advised of and concerning the premises, takes time to consider thereon.

And afterwards the following further proceedings were had in this cause, to wit:

Finding and judgment.—Filed Tuesday, June 22, 1858.

Finding and judgment filed in this cause, in words and figures following, to wit:

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

This cause came on to be heard before the court, and, after hearing all the evidence of the parties, the court finds from the evidence the following facts, viz:

That on the fifth day of October, in the year seventeen hundred and ninety-three, the Spanish government conceded or granted to one Esther, a free mulattress, a tract or parcel of land situate on the border of the Mississippi River, and between that and the Earthen Barn, La Grange de Terre, as stated in the plaintiff's petition. The concession to Esther had no definite location by the terms of the grant, but she took possession under said grant of a tract of land lying between the Big Mound and the Mississippi River.

269 That on the twenty-fifth day of June, in the year seventeen hundred and ninety-four, the said Spanish government conceded or granted to one Joseph Brazeau a tract or parcel of land of four arpents in front by twenty arpents in depth, as described, and bounded as stated in the plaintiff's petition. That the said Brazeau took possession of the said tract or parcel of land so granted by said government about the time of said concession.

That afterwards, on the ninth day of May, in the year seventeen hundred and ninety-eight, the said Joseph Brazeau, by his deed of that date, sold and conveyed the said tract or parcel of land conceded and granted to him as aforesaid, to one Louis Labeaume, excepting, however, and said Brazeau in his deed reserved to himself four arpents of said tract of land, "to be taken at the foot of the hillock in the southern part of said land;" that the said four arpents so reserved by said Brazeau in his said deed to said Labeaume are situate within the limits of the out-boundary line of the village of St. Louis, run in conformity to the first section of the act of Congress making further provisions for settling the claims to land in Missouri Territory, approved June 13, 1811. That after said sale and conveyance to Labeaume by Brazeau, but prior to the fifteenth day of February, seventeen hundred and ninety-nine, the said Louis Labeaume petitioned said Spanish government for a grant of three hundred and sixty arpents of land, including that which he acquired of Brazeau, that is to say, twenty arpents in depth from the Mississippi River, ascending Rocky Branch, west quarter south, by sixteen arpents front, along the Mississippi River, to be taken from the descent of the road into the creek, as stated in plaintiff's petition. That said Spanish government caused the land petitioned for as aforesaid by said Labeaume to be surveyed by one Antoine Soulard, acting surveyor general under said government at the time stated in plaintiff's petition, which said survey does not embrace any portion of the land reserved by Joseph Brazeau in said deed to Labeaume, dated the ninth day of May, seventeen hundred and ninety-eight. That the board of commissioners for the adjustment of land-titles in the Territory of Missouri, on the twenty-second day of September, in the year 1810, confirmed to said Joseph Brazeau the said four arpents. That the said commissioners, on the fourteenth day of June, in the year 1811, issued their certificate of confirmation No. 983, as stated in the plaintiff's petition.

That the said Joseph Brazeau and his wife, on the twenty-sixth day of June, in the year 1816, by their deed of that date, conveyed all their right, title, and interest in said four by four arpents of land, to Pierre Chouteau, which deed was duly recorded as stated in plaintiff's petition.

That in the month of November, in the year 1817, by authority of the United States, and under the direction of the surveyor general for the district of Illinois and Missouri, the said four by four arpents of land were surveyed by Joseph C. Brown, of which the following is a copy:

270 "*No.* 982 *and* 983.

"Township No. 45 north, range No. 47 E. of the 5th principal meridian. Surveyed for Louis Labeaume, two tracts in one. The one confirmed in his own name for 356 arpents; the other under Joseph Brazeau for four arpents, together 360 arpents, equal to 306 1-4 acres, beginning at the mouth of the branch, the S. E. of Easton's tract, thence down the Mississippi River, bending therewith, S. 24 E. 12 chains; S. 33 E. 14 chains; S. 35 E. 13 chains; S. 27 E. 8 chains; S. 25 E. 13 chains; S. 24 E. 15.50, a stone at the mouth of an old ditch, the lower corner on the river; thence S. 74½ W. 11 chains 50 links, intersects the line of the common fields, 63 chains 50 links, a stone the southwest corner of the tract; thence N. 15½ W. 10 chains 20 links, to the branch where the road crosses; thence, meandering down the same, N. 50 deg. E. 2 chains 50 links; N. 25 W. 5 chains 70 links; E. 2 deg. N. 6 deg.; N. 70. deg. E. 3 chains 70 links; N. 2 chains 86 links; N. 3 chains 50 links; N. 25 chains; E. 4 links; N. 60 E. 1 chain 50 links; N. 36 E. 2 chains 50 links; N. 80 deg. E. 2 chains 50, the mouth of the branch at the beginning.

"November, 1817.

(Signed) "JOSEPH C. BROWN, *D. S.*"

That on the first day of June, in the year 1826, Pierre Chouteau and wife, by their deed of that date, conveyed the said four by four arpents to one George F. Strother, which deed was duly recorded as stated in the plaintiff's petition.

That said George F. Strother, and his wife, on the third day of September, in the year eighteen hundred and thirty, by their deed of that date, conveyed the said four by four arpents of land, with other tracts of land, to John Mullanphy and John O'Fallon, in trust for the sole use and behoof of the Marine Railway Company.

That in the month of November, in the year 1840, the said George F. Strother departed this life, and administration in due form of law was had on his estate, and, in like due course of law, all the right, title, interest, and estate of the estate of said Strother in and to said four arpents of land were sold by the administrator of said estate, and conveyed to the plaintiff.

That on the second day of January, in the year 1852, John O'Fallon, (the said John Mullanphy having before that departed this life,) by authority and direction of said Marine Railway Company, conveyed by deed all the right, title, and interest of said Marine Railway Company to the plaintiff, in the land north of the ditch called Labeaume's ditch.

That the said tract of four by four arpents of land, which was confirmed to said Joseph Brazeau, is situate in the northern part of the present city of St. Louis, in the county of St. Louis, on the south side of an old ditch called and known as Labeaume's south ditch; that said

271 Pierre Chouteau, under whom plaintiff claims title to the land in question, on the fifteenth day of October, seventeen hundred and ninety-nine, petitioned for a tract of land between Roy and Labeaume, of the width of six arpents; that Labeaume's ditches were then made; that Chouteau, in his petition, called for the line of the

land of Louis Labeaume for his northern boundary; that at this time, Joseph Brazeau had promised to convey the four by four arpents to Pierre Chouteau.

That at the time of the survey made in 1803, the south ditch of Labeaume was recognized by all the adjoining proprietors as Labeaume's south line; and that possession was claimed and held with such recognition from the time of said survey, in eighteen hundred and three, until about eighteen hundred and twenty-three; that all the defendants respectively claim title and the right to possess the part and parts which they do respectively possess and claim, of said four by four arpents of land under one Louis Labeaume, or his legal representatives; and that the defendants do hold, claim, and possess portions of said tract of four by four arpents in the manner and to the extent stated in the plaintiff's petition. And that the said tract of four by four arpents of land, at the time of the confirmation thereof to said Joseph Brazeau as aforesaid, was not definitely located by the metes and bounds.

That on the 10th of September, 1810, Jacque Clamorgan, who claimed the Esther grant by deed from her the 2nd September, 1799, conveyed the same grant to said Pierre Chouteau. And from the evidence aforesaid, the court further finds that said Labeaume, in February, in the year 1806, filed his claim for confirmation before the said board of commissioners for the adjustment of land-titles for the Territory of Missouri, and said board of commissioners confirmed to him *there* hundred and fifty-six arpents, and to Joseph Brazeau four arpents, as stated in defendant's answer; that said Labeaume made the ditches and enclosures mentioned in defendants' answer.

That under the said confirmation to Labeaume, a survey of the tract of land so confirmed was ordered by the Secretary of the Department of the Interior of the United States Government, and in the year eighteen hundred and fifty-two, a survey thereof was made under and in pursuance of the instructions of said Secretary, and which survey was afterwards approved on the twenty-sixth day of February, in the year eighteen hundred and fifty-two, and thereupon a patent certificate was issued by the recorder of land-titles, certifying to the effect that Louis Labeaume, or his legal representatives, was entitled to a patent under confirmation and survey for 339 68-100 acres, equal to 399 30-100 arpents.

That afterwards, and on the twenty-fifth day of March, in the year eighteen hundred and fifty-two, a patent was issued by the Government of the United States, granting said tract of land described in the last-mentioned survey, to Labeaume, or his legal representatives, and to his or their heirs and assigns; saving and reserving, however, any valid adverse rights which may exist to any part thereof; that when said last-
mentioned survey was made, and also when said patent was issued
272 as aforesaid, to said Labeaume, or his legal representatives, the defendants had knowledge that the plaintiff claimed to be the legal representative of Joseph Brazeau, under and in virtue of the deeds and conveyances, and documents and proceedings, set out in the plaintiff's petition, and that he claimed to have and to hold the equitable title to said four by four arpents reserved by said Brazeau, in his said deed to said Labeaume. The court further finds that there is no evidence that survey No. 3332, for Louis Labeaume, or his legal representatives, or the patent thereon, were obtained by any fraud whatever; that the U. S. survey No. 3332, for Joseph Brazeau's legal representatives, was made, and a patent was issued thereon, in eighteen hundred and fifty-two, as alleged in the answer of the defendants, for the Brazeau reservation; and that said survey and patent do not embrace any land lying north of

said south *south* ditch of Labeaume; that the conveyance made by Labeaume to Chambers, in eighteen hundred and sixteen, through whom the defendants claim title, was made upon good and valuable consideration, and without any notice of the equities now set up by the plaintiff.

That said Louis. Labeaume, and those claiming under him, have had possession of, and have used, occupied, and enjoyed, the premises in controversy from about 1798 to the time of the commencement of this suit. The court decides upon the foregoing facts that the plaintiff is not entitled to the relief sought by his bill, and that said petition should be dismissed at the cost of the plaintiff.

C. B. LORD.

Upon the finding as aforesaid, it is ordered and adjudged by the court that the plaintiff take nothing by this suit in this behalf, but that the defendants go hence without day, and recover of said plaintiff their costs and charges herein expended, and have execution therefor.

And afterwards the following further proceedings were had in this cause, to wit:

WEDNESDAY, *June* 20, 1858.

Motion and case for review filed in this cause. (For which motion and case for review see bill of exceptions.)—Clerk.

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

And afterwards the following further proceedings were had in this cause, to wit:

THURSDAY, *July* 1, 1858.

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

Now, at this day, the court being fully advised of and concerning the premises of the motion heretofore filed for review in this cause, doth order and adjudge that said motion be overruled.

273 And afterwards the following further proceedings were had in this cause, to wit:

Affidavit for appeal filed; appeal bond filed.

FRIDAY, *July* 2, 1858.

JOHN MAGWIRE
vs.
MARY L. TYLER ET. AL.

Bill of exceptions "A."—A No. 1.

Bill of exceptions filed "A" in this cause.

Bill of exceptions filed in this cause.

Appeal to the supreme court.

Now, at this day, comes said plaintiff by his attorney, and files herein his affidavit for an appeal, and on his motion an appeal to the Supreme Court here, from the decision herein rendered; and thereupon he files herein a bond, as required by the court, in the sum of one thousand

dollars, with Charles R. Dickson and John M. Krum as securities, duly acknowledged by them, which is approved by the court.

Bill of exceptions "A."—A No. 1.

Which bill of exceptions "A" is in the words and figures following, to wit:

Land court bill of exceptions.

JOHN MAGWIRE
vs.
MARY L. TAYLOR ET AL.

Be it remembered that on the trial of this cause the plaintiff gave in evidence the following writings and documents, viz:

1st. Petition of Esther, dated October 2nd, 1793, for which see 63 page of this transcript.

2nd. Declaration and certificate of Trudeou, lieut. governor, dated October 3rd, 1793; for which see 64 page of this transcript.

3rd. Concession to Esther, October 5, 1793; for which see 65 page of this transcript.

4th. Petition of Joseph Brazeau, June 1st, 1794; for which see 67 page of this transcript.

5th. Declaration and certificate (Exhibit E) of Trudeau, lieut. governor, dated June 10, 1794; for which see 68 page of this transcript.

6th. Exhibit F. Concession to Joseph Brazeau, June 25th, 1794, herein above on page 69.

7th. Exhibit G. Deed from Joseph Brazeau to Louis Labeaume, May 9th, 1798; for which see 70 page of this transcript.

8th. Exhibit H. Petition of Louis Labeaume to Don Zenon Trudeau; for which see 72 page of this transcript.

274 Exhibit I. Order of survey for Louis Labeaume; for which see 73 page of this transcript; also plat and certificate on page 75.

Exhibit K. Certificate of sale by Joseph Brazeau to Louis Labeaume, May 12, 1798; for which see 75 page of this transcript.

Proceedings of the board of commissioners for the adjustment of land-titles in the Territory of Missouri, including the confirmation to Joseph Brazeau, Sept. 22, 1810; for which see 78 page of this transcript.

10. Claims filed by Louis Labeaume with the recorder of land-titles, February 26, 1806; for which see 76 page of this transcript.

Exhibit L, (H.) Certificate, called patent certificate, in favor of Joseph Brazeau, June 14, 1811; for which see 79 page of this transcript.

Exhibit M, 12. Deed from Joseph Brazeau to Pierre Chouteau, dated July 26, 1816; for which see page 80 of this transcript.

Exhibit N, (I.) Survey by Joseph C. Brown, in Nov., 1817; for which see 82d page of this transcript.

Exhibit O, (K,) 14. Deed from Pierre Chouteau to George F. Strother, June 1, 1826; for which see 85 page of this transcript.

Exhibit P, (L.) Deed from George F. Strother and wife to John O'Fallon and John Mullanphy, in trust for the Marine Railway Company, September 3, 1830, Book 2, 217; for which see 87th page of this transcript.

Exhibit Q, (M.) Letters of administration on George F. Strother's estate, dated in 1841, to Alexander Hamilton; for which see page 91 of this transcript.

Exhibit R, (N.) Deed from Alexander Hamilton, esq., administrator of the estate of George F. Strother, to John Magwire, June 4, 1846; for which see page 93 of this transcript.

Exhibit S, (O,) 18. Deed from the St. Louis Marine Railway Company to John Magwire, dated January 2d, 1852; for which see pages 96 and of this transcript.

Exhibit T, 19. Report of Surveyor N. F. Hyer.

Report of N. F. Hyer.

In the circuit court of the United States.

COUNTY SURVEYOR'S OFFICE,
St. Louis, Mo., Nov. 22nd, 1852.

By virtue of an order of the court in this case, that a survey be made of the premises in dispute herein, to me directed and delivered, and in pursuance of due notice given to the parties, I have, since the tenth day of September last, executed the said order upon the premises in the following manner, to wit: I was met on the premises by John Magwire, who appeared for the plaintiff, and B. A. Hill, esq., who appeared for the defendants. The parties pointed out to me the south line of the survey, in the name of Louis Labeaume, and the location of Labeaume's southern ditch, which is the south line of said survey,
275 and in that line the stone recently set by General Milburn on the N. W. corner of survey No. 3332, in the name of Joseph Brazeau, which stone the parties agreed was at a corner of the four arpents reserved by Brazeau in his sale to Labeaume, (see Doc. E;) the plaintiff claiming that it was the S. W. corner, and the defendants that it was the N. W. corner, Labeaume's southern ditch being either the north or south line of the said four arpents; the plaintiff claiming that it lay north of the ditch, and requesting me to survey it there; the defendants claiming that it lay south of the ditch, in accordance with the survey recently made by Gen. Milburn, under the direction of the surveyor general; the defendant wanting no survey made except the lot No. 103 in block No. 321, which lot I have surveyed and correctly represented on the map herewith returned, shaded yellow. At the request of the plaintiff I have made the following survey:

Beginning at the intersection of the north line of Antoine Roy's survey with the line of curbstone on the east side of Main street, and running thence N. 5 W., along said line of curbstone, 22 chains and 50 links; thence N. 9° W. 32 chains and 71 links, to the line of Labeaume's survey, to a point 2 chains and 38 links westwardly from the southeast corner of said Labeaume's survey; thence S. 74¾° W., with the line of Labeaume's survey, 9 chains and 53 links, to the corner of Brazeau's survey No. 3332, as before noted, 12 chains and 41 links, to the curbstone on the east side of Broadway; thence N. 21½° W. along the line of curbstone so far as that line, drawn parallel to Labeaume's south ditch, when produced, will touch the southern side of Rocky Branch, and at a corner of Labeaume's survey by Milburn, as represented on the map, which line I find, by calculation based upon my own measurements, (the buildings, &c., preventing my measurements in its true line,) to be distant from the said south line of Labeaume's survey 58 chains and 33 links and on a course N. 20° W. I now go to the corner of Labeaume's survey, at the bridge, as represented on the map, and run N. 74¾° E. 15 chains and 43 links, to the bank of the river, the point represented on the map as the N. E. corner of the four by twenty arpents to Joseph Brazeau. Having estab-

lished this point, I am enabled to lay down on the map, as I have done, the concession to Joseph Brazeau (see Doc. B.) of four by twenty arpents; and from the survey herebefore described, together with the description contained in the certified copies of documents furnished me, I have laid down the claim of Antoine Roy, (see Doc. C;) the claim of Esther, (see Doc. A;) the claim of Pierre Chouteau, (see Doc. D;) and to make the survey of four arpents reserved by Brazeau in his sale to Labeaume, (see Doc. E,) as claimed by the plaintiff, which survey I have made, at the request of the said plaintiff, as follows:

Beginning at the N. W. of survey No. 3332, situate as before mentioned, I run N. 29° W. 11 chains 66⅔ links, to a point from which the east end of a brick house is 31½ links distant, and the north line of C. Case's dwelling-house is 14½ links distance; thence, at 74¾° E. 12 chains, set a stone for corner, from which the S. E. corner of a lath factory,
276 occupied by Summelman & Marine, bears N. 24° E., 153 links distant, and a large black-walnut post, set for hitching boats, bears N. 72° E., 05 links distant; thence south 29° E. 11 chains and 66⅔ links, (four arpents,) to a point from which N. E. corner of survey 3332 bears S. 74¾° W., and is 21 links distant; thence S. 74¾° W. 12 chains, to the place of beginning, containing 16 arpents of land.

On the east of this survey of *of* Brazeau's survey, four by twenty arpents, I have represented two lines, one making the corner at the south end identical with those of survey 3332, and the other four arpents distant from the west line of said tract, at right angles therefrom.

I have also taken three lines of levels from the Big Mound, or Grange de Terre, which are represented by the lines of profiles on the map. From the Big Mound, or Grange de Terre, the ground descends to the shaded blue line on the northern part of survey No. 3332, and from that line the ground begins to rise to the north. I have also represented on the map the general course of Rocky Branch, together with a portion of the topography of the land near the bridge. I have also surveyed the lots and blocks in the four by four arpents, as represented on the map, together with a portion of Broadway, with the cross-streets.

N. F. HYER,
County Surveyor.

Exhibit Y, 20. Letter of E. T. Langham, surveyor general, to F. R. Conway, recorder, dated 9 March, 1833, which is copied on page 253 of this transcript, and referred to.

Exhibit Z, 21. Letter of F. R. Conway, recorder, to E. T. Langham, surveyor generel, March 23, 1833, which is copied on page 254 of this transcript.

Exhibit A A, 22. Survey No. 2974, by Brown, dated June 8, 1833, which is copied on page 158 of this transcript.

22. Letter from Commissioner of General Land Office to Surveyor General Conway, dated July 19th, 1841, which is copied hereinabove on page 164.

Exhibit B B, 24. Letter from Commissioner of General Land Office to F. R. Conway, surveyor general, July 19, 1841, which letter is copied hereinabove on page 167.

Exhibit C C. Report of Surveyor General Conway to the Commissioner of the General Land Office, which is copied hereinabove on pages 169, and of this transcript, and now referred to.

Exhibit E E. Survey No. 3333, by Milburn, which is copied hereinabove on page 126, and of this transcript.

Exhibit H H. Recorder's certificate on survey No. 3333, which is copied hereinabove on page 149 of this transcript.

Exhibit I I. Patent to Labeaume's representatives, which is copied hereinabove on pages 152, and of this transcript.

277 *Act of incorporation of the Marine Railway.*

An act to repeal the charter of the St. Louis Marine Railway Company.

Whereas the St. Louis Marine Railway Company has failed to accomplish the object of its incorporation, and it being the wish of the stockholders that the affairs of the company should be settled up, the property divided or disposed of, and the act of incorporation repealed:

Now, therefore, be it enacted by the general assembly of the State of Missouri, as follows: 1st. That the owners of the stock in the St. Louis Marine Railway Company, or the executors or administrators of such owners, are hereby authorized and empowered to hold a meeting at the court-house, in the city of St. Louis, on the second Monday of March next, for the purpose of determining what disposition shall be made of the lands and property belonging to said company, and at that and an adjourned meeting or meetings to provide for the sale, gift, partition, or other disposition of the same, and any deed or deeds of conveyance, sale, or partition of the same, or any part thereof, executed in the name of said company, in conformity with the resolutions and directions of stockholders, shall be effectual to pass the title of the lands and property, according to the terms of such deeds or conveyances: Provided, that at such meeting each share shall be entitled to one vote, and may be represented by proxy, with a written authority to that purpose.

2nd. That upon the final disposition of the property and effects of said company by the stockholders aforesaid, and the payment of the debts and liabilities thereof, if any, the said corporation shall be dissolved, and the act of incorporating them shall be repealed to all intents and purposes.

3rd. That said stockholders may hold meetings on their own adjournments from time to time for the accomplishment of this act, and meetings may also be called by any two stockholders by a notice published for two weeks previously in some public newspaper printed in the city of St. Louis, at any of which meetings, whether called or adjourned as aforesaid, the proceedings of the stockholders present, in person or by proxy, shall be binding on all, and effectual for the management and disposal of the property of said corporation and the closing up of its effects.

This act to take effect from its passage.

Approved February 15, 1841.—(Laws of Missouri, page 187.)

The proceedings of said Marine Railway Company in respect to making the deed from John O'Fallon, survivor, to plaintiff.

ST. LOUIS, *Dec.* 31, 1851—4 o'clock p. m.

In pursuance of a notice, of which the annexed advertisement is a copy, a meeting of the stockholders of the St. Louis Marine Railway Company was held at the office of F. M. Haight, at which were present Daniel D. Page, owning seventy shares, Peter Lindell, twenty shares, and Louis A. Benoist, fifty shares.

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On motion, the following resolutions were passed:

Resolved, That the land belonging to, or claimed by, the Marine Rail-

way Company, in the city of St. Louis, and north of what is known as Labeaume's ditch, being four arpents in front on the river, and four arpents in depth, and bounded east by the Mississippi River, and south by said ditch of Labeaume, and containing sixteen arpents, be conveyed to John Magwire, and that John O'Fallon, surviving trustee, who holds the legal title to said land, be, and he is hereby, directed to make said conveyance to said Magwire, and deliver the same.

Resolved, That on receiving the deed in the last resolution mentioned, said John Magwire execute and deliver to the stockholders of said company an agreement to commence suit or other proceedings without delay, and at his own expense, for the recovery of the land to be conveyed to him, and on recovering the same, or any part thereof, to convey to each stockholder such portion of said land as shall be equal to one-fourth of what is represented by stockholders may hold at the time of said recovery—that is, each share represents the two-hundredth part of said land; and in case of recovery, said Magwire is to convey to each stockholder, for every share of stock, one-fourth of the two-hundredth part of such land as may be recovered.

Adjourned to meet at the same place on the fifth day of January next, at four o'clock p. m.

DANIEL D. PAGE.
PETER LINDELL.
LOUIS A. BENOIST.

William H. Cozens' testimony, which is copied hereinabove, on pages 88 to 106.

Diagram showing the Spanish and United States surveys of Louis Labeaume, Pierre Chouteau, Antoine Roy, and those adjoining, and the position of the Spanish claims of Esther and Brazeau, each 4 by 20 arpents.

From the front line of the common field lots, at the north end of the Big Mound to the river, in a direct line, is 4 arpents, 127 French feet. From the north end of Big Mound along front line of common fields to Labeaume's southern ditch, is 4 arpens and 20 French feet. The quantity of land within the square made by the common field line, Labeaume's southern ditch, the river, and a line drawn from the northern foot of the Big Mound, parallel with said ditch to the river, is $22\frac{51}{100}$ acres, equal to $26\frac{46}{100}$ arpents. The distance on a straight line along the river, from the eastern end of Labeaume's southern ditch to the mouth of Rocky Branch, is 25 arpens and 66 French feet.

The Big Mound stands on several rises of ground, the steepest and nearest being at the distance of one chain, equal to 66 feet, east of the mound; the second, three chains, equal to 198 feet; and the third, 7 chains, equal to 462 feet; and on the north of the mound the first rise is at the distance of 4 chains 75 links, equal to 312½ feet; and the
279 third near the ditch. The Half Moon ("Demi Lune") was situated on the foot of Cherry street, near south side; Roy's tower is situated north of the Half Moon, at a distance of 1,578 feet, English, from the outer or northern wall or edge of the old Half Moon to the southern wall of Roy's tower or windmill, being 246 toises and 5 inches.

It is 362 feet from the southern line of Roy's tract to the centre of his tower, and 382 feet from the northern line of his tract to centre of his tower. "From Labeaume's south ditch to Roy's south line is $22\frac{9}{100}$ arpents; from said ditch to the tower it is 21 arpents.

"The quantity of land between Labeaume's north ditch and the Rocky Branch is, by careful admeasurement, $42\frac{72}{100}$ arpents. Henry Proux's

New Madrid location, under certificate No. 184, covered the reservation to Brazeau and the other grants east of the line of the common fields and south of Labeaume's ditch.

References to the annexed plat of surveys.

AB, BC, CD, DE, EF, and FA. Survey No. 2974. Louis Labeaume's grant, and identical on all the lines, except the west line, with Soulard's survey of Spanish grant, 10th April, 1799. Said survey, No. 2974, was made under the confirmation by the United States in 1817, and the recorder of land titles approved thereof, but excluded the Brazeau reservation from this tract, and this survey was then made identical with the first survey, except on the west line, and the Brazeau reservation was excluded and placed south of the southern ditch of Labeaume, and running to the foot of the Big Mound, according to Brazeau's petition, and the reservation in his deed to Labeaume.

ae, ef, fd, da. Brazeau's 4 by 20 arpents.

Grant made 25th June, 1794, on petition of first June, same year, 4 by 20 arpents to be located beyond or immediately on the other side of the mound La Grange de Terre, and described in the grant as land extending 20 arpents in N. N. W. direction from the foot of the hill where the Grange de Terre is situated.

ab, be, ed, da. Reservation by Brazeau of 4 by 4 arpents north of the foot of the mound La Grange de Terre, reserved in his deed to Labeaume of 9th May, 1798.

ag, gh, ho, da. Esther's concession of 4 by 20 arpents, 2d October, 1793; annulled in 1797, August 4th, and never surveyed; described this tract as land situated at the north of St. Louis, and that the north part of the concession lay between the barn named La Grange de Terre and the bank of the Mississippi; thence descending said river as far as the complement and extent of 20 arpents in length.

l, o, p, q. United States survey, No. 671, for Peter Chouteau, 93 arpents and 1 perch.

l, k, m, n. The angle containing $42\frac{72}{100}$ acres, formed by Rocky Branch, Mississippi, and a line from where the old road begins to descend into the Rocky Branch perpendicular to the Mississippi.

280 *g, o, i, k, m, n, r, q.* Soulard's survey of Spanish concession to Labeaume of 374 arpents made April 10th, 1799.

X, Big Mound, La Grange de Terre. I. Demi Lune or Half Moon, x Roy's tower.

Cozens' testimony.

Witness said his recollection was better than it is now. At that time witness spent a great deal of time in examining the whole matter. Witness thinks that taking all his testimony and the facts one with another, his deposition given in perpetuation before mentioned, is more reliable, where it conflicts with his present testimony, than his statements now.

Witness states that he observes an inconsistency in his statement then, and now in this. When witness gave his said deposition he located the four by four arpents reserved by Brazeau south of Labeaume's south ditch. If, however, the translation of the documents placed in my hands are correct, I must adhere to my statement given now. The different opinions I have expressed were formed on different translations given me. When I testified in 1853, I took the foot of the mound

and where the road descends into the creek as the starting points. The translation of the different papers that have been placed in my hands at different times are very dissimilar and unlike. One translation is "to begin at the foot of the mound," and the other at a point "beyond the foot of the hillock or mound." The different opinions given by me have been in accordance with the different translations furnished me by the different parties. The map annexed to my deposition is a copy of one I made in some other case. The original was before me when I gave my testimony. The reservation of four by four arpents in Brazeau's deed to Labeaume is within the grant of four by twenty arpents conceded to Brazeau. If the Exhibit F, which is the concession of four by twenty arpents to Brazeau, is a proper translation, there is plenty space between Labeaume's south ditch and the creek, (Rocky Branch,) for the four by twenty arpents, assuming the starting point to be where the road crosses the creek, and assuming, as I have said, that this exhibit be correctly translated, then the whole 374 arpents surveyed for Labeaume's representatives are north of Labeaume's south ditch. On re-examination by plaintiff, witness stated that when he gave his deposition in perpetuation he had copies of the original concessions of every tract of land in that vicinity before him. Witness understands the French language tolerably well, can read French and translate it.

Bill of exceptions.

The parties enter into the following stipulation in respect to testimony, which is filed with the papers in this case.

For which stipulation, see pages 28, 29, of this transcript. (Clerk.)

Plaintiff then, under said stipulation, gave in evidence the testi-
281 timony of N. F. Hyer, Augustus H. Evans, M. Lewis Clark, F. R. Conway, and John B. Sarpy, from the report of the testimony taken and filed in the case of Magwire vs. Vice in court of common pleas.

N. F. Hyer's testimony, which is copied hereinabove on pages 210, &c. (Evans,) A. H., testimony, which is copied hereinabove on pages 218, and —

M. Lewis Clark's testimony, which is copied hereinabove on pages 203, and —

R. F. Conway's testimony, which is copied hereinabove on page 195, and —

John B. Sarpy's testimony, which is copied hereinabove on page 228, &c.

Bill of exceptions.

Agreement as to using map by N. F. Hyer.

It was admitted that the large map used before the court in this trial was made by N. F. Hyer, and it is agreed that the same map, which has N. F. Hyer's name upon it, may be used in the supreme court without being copied into this record.

Record of in the case of Pierre Chouteau vs. W'm Christy, in St. Louis circuit court.

Plaintiff gave in evidence the record in the suit of Pierre Chouteau vs. W'm Christy, in the St. Louis circuit court, June term, 1823.

Ejectment.

PIERRE CHOUTEAU } Declaration filed May 4th, 1823.
vs.
WILLIAM CHRISTY. }

On the trial the plaintiff failed to produce the deed from Brazeau to Labeaume. A copy was offered which, not being properly authenticated, was excluded as evidence and a non-suit taken.

Bill of exception.

PIERRE CHOUTEAU }
v.
WILLIAM CHRISTY. }

Be it remembered that on the trial of this cause the plaintiff read in evidence the following certificate of survey, (here insert the concession to Brazeau, the concession to Esther, the concession to Chouteau, and concession to Labeaume.)

The plaintiff then read in evidence the following confirmation to Labeaume and Brazeau, together with a copy of the proceedings of the commissioners of land titles thereupon. (Here insert the same.) The plaintiff then gave in evidence a deed from Brazeau to Labeaume, and a deed from Brazeau to Chouteau, which here follow. (Here insert the same.)

282 The plaintiff then proved that the southern ditch, in the said Labeaume's survey represented, is about four arpents distant from the said Grange de Terre; that the northern ditch is sixteen arpents distant from the southern ditch; and that the point, the Rousseau de Pierre, which is nearest the southern ditch, is about twenty arpents therefrom. The plaintiff further proved that a short time previous to the commencement of this suit, while the said Chouteau was surveying the tract of land within the said ditches, containing four arpents in front and four arpents in depth, bounded southwardly by the southern ditch, and eastwardly by the Mississippi, the said Christy went thereupon, claiming exclusive titles. The defendants then proved that the said Labeaume, some time in the year 1799, on his own account and at his own expense, made the said ditches, and that the said Brazeau, although he frequently passed through the said land while the said ditches were making and afterwards, made no objection thereto; nor did he ever make any claim to any part of that land included within the said ditches; that the said Labeaume, some time in the year seventeen hundred and ninety-nine, built a house upon said Brazeau's concession, and put up a rail fence enclosing a great part thereof, not including, however, the said sixteen arpents in dispute, and that Labeaume and his tenants occupied the said house and cultivated the land inclosed in the said rail fence from the time the same were built until some time in the year eighteen hundred and sixteen, when the said Christy entered on the same under the said Labeaume, and the said Christy has ever since remained in possession of the same; that ever since the date of the aforesaid deed from Brazeau to Labeaume, they both lived and resided, until the year eighteen hundred and thirteen, in the county of St. Louis, when the said Labeaume removed to Washington County, and the said Brazeau continued until the time of his death, which took place in 18—, to reside in St. Louis County; and that the said Labeaume, when he made the said ditches, erected behind them a fence, which continued standing two or three years and was then destroyed, and that since the said time the said ditch has been gradually falling into ruins, and that for about twenty years the said ditch has been insufficient as an inclosure; and

that during that length of time two roads, generally used, passed through said sixteen arpents in dispute, and no proof was given that since the year 1801 the said Labeaume or any other person had ever actually occupied the said disputed sixteen arpents, except as aforesaid, or exercised any acts of ownership over the same. Whereupon the plaintiff, by his counsel, moved the court to instruct the jury:

1st. That if the jury find that at the time of the making of the deed from Brazeau to Chouteau, the tract of land in dispute was waste and uninclosed by a real and substantial enclosure, and that no person exercised acts of ownership over the same, or took the rents or profits thereof, that the deed from Brazeau to Chouteau is not void under the statute of 32, prohibiting the buying of pretended titles.

2d. That if the jury find that the title of Brazeau to the said
283 sixteen arpents of land has been confirmed, and that Labeaume's claim has been rejected by the commissioners, or still remains unconfirmed, that Labeaume and those claiming under him cannot set up the law of prescription against the said Brazeau, and those claiming under him.

3d. If the jury find that the board of commissioners have confirmed to Brazeau four arpents in front by four arpents in depth, lying within the ditches, that no adverse claim can be set up against Brazeau's claim unless it be by virtue of a complete Spanish or French grant, or by a confirmed concession, or by other titles confirmed by the United States, all of which instructions the court refused to give, to which opinion of the court the plaintiff, by his counsel, excepts and prays his bill of exceptions to be signed, sealed, and made part of this record, which is done accordingly.

[SEAL.] ALEXANDER STUART.

Bill of exceptions.

Plaintiff gave in evidence the record of the suit of George F. Strother vs. William Christy in the St. Louis circuit court, as follows:

Record of George F. Strother vs. William Christy in the St. Louis circuit court.

In the circuit , county of St Louis, November term 1829.—
No. 103.

STATE OF MISSOURI, *County of St. Louis, to wit:*

George F. Strother complains of William Christy of a plea of trespass, to wit: that, on the first day of October, 1829, said Strother was and is still entitled to possession of a tract of four by four arpents of land, confirmed by the board of commissioners for the adjustment of land titles to Joseph Brazeau, it being a part of a larger tract of four by twenty arpents conceded to said Brazeau, bounded on the south by a tract conceded to Pierre Chouteau.

A nonsuit was taken by the plaintiff in this case, as is shown by the bill of exceptions signed.

Bill of exceptions.

GEORGE F. STROTHER }
vs.
WILLIAM CHRISTY. }

Be it remembered that, on the trial of this cause the plaintiff stated

his title to the land in the declaration mentioned to be derived as follows:

1st. That said land was confirmed by the board of commissioners for the adjustment of land titles in Missouri to Joseph Brazeau.

2nd. That said Brazeau and wife, by their deed dated 24th July, 1816, conveyed said land to Pierre Chouteau.

284 3d. That said Chouteau, by his deed, dated the same year, 1816, conveyed same land to the plaintiff, and said plaintiff alleged that said deed from Brazeau and wife to said Chouteau was lost; and to authorize secondary evidence as to said deed and its contents, the plaintiff introduced the following witnesses, who testified as follows:

Pierre Chouteau, who testified that some time, as near as he could recollect, in 1816, Joseph Brazeau and wife executed to him a deed of four by four arpents of land situated in said county, north of what is called La Grange de Terre; that the deed from Brazeau and wife to him he got recorded in the recorder's office in St. Louis county; that said Chouteau never obtained from said Brazeau any other deed for a similar quantity of land; that he, said Chouteau, had left said deed with Horatio Cozens, deceased, as his lawyer, since which time he had never seen it; that after the death of said Cozens he, said Chouteau, had inquired of Joseph F. Garnier, the administrator of said Cozens, who searched for it and could not find it; said Chouteau declared that he believed that said deed was lost.

Joseph F. Garnier testified that he was one of the administrators of Horatio Cozens; at the request of the plaintiff in the case he had carefully searched among the papers of Horatio Cozens for a deed *for deed* from Joseph Brazeau and wife to Pierre Chouteau, and could find no such deed; says also, that he has had the care and possession of all the papers of said Horatio Cozens, deceased, which he ever knew or heard anything of.

The original books in which deeds are recorded, kept by the recorder f St. Louis County, in which was found the record of a deed from Joseph Brazeau and wife to Pierre Chouteau, dated July 26, 1816, was produced by said recorder of said deeds; it appears that said Brazeau and wife, at the date of said conveyance to Pierre Chouteau aforesaid, of all the rights and titles to the following tract of land, namely, four by four arpents of land, situate in said county, to be taken from the south part of a concession of four by twenty arpents of land granted to Joseph Brazeau, agreeably to a reservation in a deed from Brazeau to Louis Labeaume, recorded in the recorder's office of St. Louis County, beginning at the foot of the hill on which La Grange de Terre is situated, bounded east by the Mississippi River, west by vacant land.

Mary P. Leduc was sworn and asked to examine the record of said deed, and to state what he knew about the original. Said Leduc testified that he had no distinct recollection of the original deed, but that by the record that he and his daughter, deceased, were subscribing witnesses to the deed; that he was, at the time the deed was recorded, recorder of St. Louis County, and recorded the deed; that the said deed purports to have been acknowledged before him as the clerk of the St. Louis circuit court. Witness says he believes he was a subscribing witness to the deed thus recorded, for the reason that his name appears as a witness and as the clerk before whom the said deed was acknowledged; and if his signature had been forged as a witness or the officer who took the acknowledgment, he should have detected the forgery, and

285 refused to record the said deed. He, Leduc, says that in 1816, when said deed was alleged to have been executed, he was well

acquainted with Joseph Brazeau and with his handwriting; also states that the record of the deed was not in his, Leduc's, handwriting, but was in the handwriting of one Provenchi, who was then employed as clerk in his office; that the record of said deed was signed by himself, as follows: "M. P. Leduc, clerk."

A deed from Pierre Chouteau to plaintiff was produced, which was acknowledged and recorded, and which shows that said Chouteau has no interest in the land in question.

The plaintiff was sworn, and testified that he had made diligent search and inquiry of every person, and at any place, with whom or where he thought the original deed from Brazeau to Chouteau might be found; he had never seen it or had it in his possession.

Archibald Gamble, recorder of St. Louis County, sworn, testified that, at the request of plaintiff, he had carefully searched among the papers of his office, and had been unable to find any deed from Joseph Brazeau and wife to Pierre Chouteau.

On this evidence the plaintiff offered in due time the record of the deed from said Joseph Brazeau and wife to Pierre Chouteau, which evidence was objected to on the ground that neither the loss nor execution of the original deed was proved. The objection was sustained by the court, and the evidence offered rejected; and the plaintiff, by his counsel, stated that he would take a non-suit, and the court accordingly directed the non-suit to be entered. After which the plaintiff moved the court to set aside the non-suit for the reasons filed, which motion was by the court overruled.

To this decision of the court the plaintiff excepts, and this bill of exceptions is signed and sealed, and made a part of the record.

[SEAL.] WILLIAM C. CARR.

2 vol. Mo. Reports, page 148. (Rec. ccx, D. T. 1860.)—17.

Bill of exceptions.

It was admitted that Chouteau & Strother, in the suit above mentioned, sued for a tract of land within or a part of the four by four arpents situate immediately north of Labeaume's south ditch, next the Mississippi River, and that they claimed the land they sued for, respectively, under Joseph Brazeau as part of his reservation mentioned in his deed to Labeaume.

Plaintiff gave in evidence the acts incorporating the Marine Railway Company, as follows:

It is agreed that said acts may be read from the printed statute-book before the Supreme Court without being copied into the record. It was admitted and agreed by the parties that the land in controversy in this suit is worth at least the sum of $250,000. It was admitted that the land sued for in this suit is situated within the limits of the outboundary line of the village, run in conformity with the first section of the act of Congress approved June 13th, 1812.

286 *Defendants' case.*

Defendants gave in evidence the testimony of the following parties, to wit:

William Milburn's testimony, which is copied hereinabove on pages 316 & fol. of this transcript.

Jacques Labbe's testimony, which is copied hereinabove on pages 418 & fol.

Antoine Smith's testimony, which is hereinabove copied on page 425.
Joseph Labarge's testimony, which is copied hereinabove on pages 428 &
John B. Hortiz's testimony, copied hereinabove on pages 430 &
William Waddingham, testimony copied hereinabove on pages—
John K. Walker, testimony copied hereinabove on pages 431 &
Cyrus G. Hoyt's testimony, copied hereinabove on pages 439 &
Neal Walker's testimony, copied hereinabove on pages 441 &
Jerusha Walker's testimony, copied hereinabove on pages 443 &
Phineas Bartlett's testimony, copied hereinabove on pages 445 &
J. J. Childs' testimony, copied hereinabove on pages 447 &

Thomas Harris's testimony.

Thomas Harris, sworn on behalf of defendant, says: I came to St. Louis on the 20th September, 1829. Don't know much of Lapsley, but have seen him several times; have been at his tan-yard; never lived with him. I know Labeaume's ditch; lived on the property in 1831, the very spot where the tan-yard was. I bound myself three years to Wilson to learn tanning; began in spring of 1831. Before Wilson, Lapsley occupied the tan-yard, and carried on butchering also. I was with Wilson about six or eight months, till he sold out. Wilson bought his lease of Lapsley. Lapsley, I understood, held under Christy & Chambers. The ditch ran up to Broadway, and the premises ran to the south ditch, and north to Cochran's mill. The house was an old log house, and looked as if it had been built for some years when I went there. The tan-yard was fenced east of Broadway. Wilson sold his lease to Powell & Martin; Thomas Powell contracted for it. The tan-yard and ground ran west of river some 300 or 500 feet.

Cross-examination:

It was fenced when I went to live with Wilson; the tan-yard and enclosures lay east of where Main street now is. Powell & Thomas didn't carry on business long after Wilson sold out; not more than one year. The enclosure ran north of the ditch from three hundred to five hundred feet in Wilson's time. I have been there often; I saw no fence after Powell & Thomas left the premises. I heard Powell say he that he had lot to lease.

287 Re-examined:

The road, where it crosses the ditch, is about 200 feet distant from the river; the tannery was between this road and the river. There was a house between that road and Broadway, occupied by Walker in 1830, and afterwards by Ranney, or Raney.

Cross-examined:

I know of no inclosure north of ditch till some distance up.
Edward Tanner's testimony, copied hereinabove on pages 487, &c.

Bill of exceptions.

Defendants then offered in evidence a letter of one Lapsley to William Chambers, which is copied hereinbefore on page 432, and one from said Chambers to Lapsley, which is copied hereinabove on page 433. To the reading of these letters the plaintiff at the time objected, on the ground that said letters were not competent evidence against the plaintiff in this case; but the court overruled plaintiff's objection, and

allowed said letters to be read, and the plaintiff at the time duly excepted.

Defendants then offered in evidence survey No. 3332, by William Milburn, copied hereinbefore on page 342 &

Patent to Joseph Brazeau, copied hereinabove on pages 344 &

Plaintiff objected to the reading of said patent, on the ground that the same was not competent evidence in this case; but the court overruled the plaintiff's objection, and allowed the same to be read, and the plaintiff duly excepted.

Defendants offered in evidence testimony of A. Renard, copied hereinabove on pages 489 and

Edward Tanner's testimony, copied hereinabove on pages 487 and fol'g.

Wilson Primm's testimony, copied hereinabove on pages 491 and following.

Defendants gave in evidence protest of Pierre Chouteau, which is copied hereinabove on pages 241 and 243.

Patent certificates 1250 and 1249, copied above on pages 491 and 493.

New Madrid certificate No. 184, copied hereinabove on page 511.

Survey of same, copied hereinabove on pages 513—.

Defendants gave in evidence survey for P. Chouteau and Antoine Soulard in 1803, copied hereinabove on page 514.

Deed from Esther to Clamorgan, copied hereinabove on page 515.

Deed from Jacque Clamorgan to P. Chouteau, on page 516, copied hereinbefore on page 516.

Deed from Louis Labeaume to William Chambers in 1816, copied hereinabove on pages 229 and following.

Deed from Chambers to William Christy and Thomas Wright, copied hereinabove on pages 236 and following.

288 Agreement between P. Chouteau and G. F. Strother, copied hereinabove on pages 337 and following.

The grant and order of survey to Esther, and all the proceedings before the board of commissioners, copied hereinabove on pages 516 and following.

Grant, confirm., of Antoine Roy, copied hereinabove on page 248.

Deed of Magwire to Bogy, dated June 6, 1846.

This deed, made and entered into this sixth day of June, eighteen hundred and forty-six, by and between John Magwire and Angeline, his wife, of the county of St. Louis, in the State of Missouri, parties of the first part, and Lewis V. Bogy, of the city and county of St. Louis, State of Missouri, party of the second part, witnesseth:

That the parties of the first part, in consideration of the sum of four hundred dollars to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, by these presents remise, release, and forever quit-claim unto the said party of the second part, all and singular the following property, being the same which the said John Magwire, by deed dated the fourth day of June, instant, acquired from Alexander Hamilton, administrator of George F. Strother, deceased, and described therein as follows: that is to say, a certain tract or parcel of land situate in the city of St. Louis, containing sixteen arpents, and running on the Mississippi River four arpents, and running back four arpents, being the same tract or parcel of land which the said Strother acquired from Pierre Chouteau and wife, by deed dated June 1, 1826, which deed is recorded in the recorder's office of the

county of St. Louis, in Book N, page 77, and to which deed reference is therein and here also made for a more particular description; to have and to hold the same, together with the rights, immunities, privileges, and appurtenances to the same belonging, unto the said party of the second part, and to his heirs and assigns forever; the said John Magwire hereby covenanting that he, and his heirs, executors, and administrators, will warrant and defend the title to the premises to the said party of the second part, and to his heirs and assigns forever, against the lawful claims of all persons claiming by, through, or under him, but not otherwise.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN MAGWIRE. [SEAL.]
ANGELINE MAGWIRE. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on this tenth day of June, eighteen hundred and forty-six, before me, a justice of the peace in and for said county, personally appeared John Magwire and Angeline, his wife, who are both personally known to me to be the persons whose names are 289 subscribed to the foregoing instrument of writing as parties thereto, severally acknowledged the same to be their act and deed, for the purposes therein mentioned. She, the said Angeline, being by me first made acquainted with the contents of said instrument, acknowledged, on an examination separate and apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her said husband.

Taken and certified the date last aforesaid.

GEO. A. HYDE,
Justice of the Peace.

Filed and recorded June 11, 1846.

L. D. BARLOW, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

The undersigned, recorder for said county, do hereby certify the foregoing to be a full and complete copy of an instrument of writing, and also of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains recorded in my office, in book Z, No. 3, p. 498.

Witness my hand and official seal of office, this 10th day of March, A. D. 1848.

S. D. BARLOW, *Recorder.*

Agreement between John Magwire and the Marine Railway Company, dated January 2d, 1862, which is copied hereinabove on page 533 of this transcript.

Certified copy of grant, survey, and all the proceedings connected therewith, from register de arpentage, of Louis Labeaume tract.

Certified copy grant, &c., from register de arpentage, of Labeaume tract.

(For translation, see pages 73 and 78.)

Louis Labeaume etat des terres que reclame Louis Labeaume dont il a semis les titres concessiones el plaus ventes et certificats de tuts a Bureau du Recorder pour per lui atre luriges etre suirant la loy due Congress passe, le 2 Mars de l'annee 1805, Pl. No. 1, L's Labeaume concession, concession de 80 arpens a lui concedee le 18 de Janvier, 1798, etable depuis cette epogue et ratife par Mr. L'Intendant, le 5 de Juillet, 1802, litre complet No. 2, L's Labeaume, 374 arpents de terre, concedee partie Jh. Brazeau, le 20 Juin, 1794, et partie au L's Labeaume, le 15 Fevrier, 1799, etable et cultivee depuis as deus epogues.

St Louis, le 26 Fevrier, 1806.

LOUIS LABEAUME.

290 No. 2.

(For translation, see page 69.)

Monsieur Don ZENON TRUDEAU, capt. au segs, fixe de la Louisiana, lieut. gov'nr, et command't en chef de la partie occidentale des Illinois:

Supplie humblement, Joseph Brazeau, dememant en cette ville et St. Louis, et a l'honneur de vous exposes quel desirent obteins dans le partie du nord de cette ville, une terre situee au dela de pied de la monticule nomme La Grange de Terre, de la largeus de 4 arpens, qui s'etendrait des ecors du pied de la monticule nomme La Grange de Terre, de la largeus de 4 arpens qui s'etendrait du ecores du Mississippi, en allant la partie du 6 quant, S. 6 sur environ, 20 arpens de hauteur qui commencement au pied des coteau on si les sus dite Grange de Terre en remotant jusque aux environs du Ruisseau de Pierre dans la partie du N. N. E., pour que la susit terre demander soit bornee du cotte de l'est par les ecors du Mississippi, les autres cotes en partie par le domaine de S. M., et en partie par des recevirs au dit domaine sur les querelles passe actuallement la presente concession a finque la supplicant y puisse recollis des fins pour les arriere aux et l'ensemenser et le supliant necessera de rendre a oribonte.

St. Louis, 1 Juin, 1794.

(Signed) JOSEPH BRAZEAU.

(For translation, see page 69.)

Nous lieutenant gouverner et commandant en chef de la partie occidentale du Illinois, a pres avoir examine que la terre demandi appertient au domain de S. M. par l'abandon que les proprietaires anciens en sut fait et l'autre partie n'ayant jamais de concedee et que le tract ne parti prejudise a personne, Je certife en consequence a avoir mis en possession le Sr. Joseph Brazeau, de la portion de terre designee par su requeste ayant 4 arpens de front sur 20 arpens de hauteur, qui l'etendant dans la partie du N. et 6 depens le puer du coteau, on est situer La Grange de Terre en temoulant jus qui a aux environs due Ruisseau de Pierre come d'un cote par les ecores du Mississippi et les cotes opposes par du terre unconcedees on recevirs au domaine de S. M., et les dieux extremities bonnes du cotes des N. N. 6 pas les environs des Ruisseau de Pierre et l'autre situee des cotes S. S. E., sera bonnee par la conces-

sion accordee a la nommee Esther, mulattresse, libre, et peur en constat, nous avons delivre le present pour servis, en la ville de St. Louis, ce 10 de Juin, de l'annee 1794.

(Signed) ZENON TRUDEAU.

(For translation, see page 70.)

Don Zenon Trudeau, capitaine au regmt. fixe du la Louisiane, l't gouv'rn., en consequence de la demande a nous faite par le Sr. Joseph Brazeau, habitant en cette ville de St. Louis, par sa reynote en
291 date des'tre de se mois et apres mis en possession, nous meme soivant l'acte que nous avons dresse e devant, le 10 des neme novis et au avons concede et concedee au dit Sr. Joseph Brazeau, a titre de propriete pour lui ses heries ayant cause on tour autres representaves ses droits la portion de terre ci devant designee consistant en la quantite de 4 arpens de front, sur 20 arpens de hauteur, situee dans la nord de cette ville, qui commenceant au del a de la nomme La Grange de Terre, s'etendant dans la partie du N. N. 6 presquer aux environs de Ruisseau de Pierre; come d'un cote par les ecores du Mississippi, et la cote oppose par des terres recevirs au domaide de S. M., sur les quelles passe la presente concession, dant un des bonte doit etre lome par la concession de la nomme Esther, mulattresse libre, afin quele Sr. Brazeau puisse y cultiver lefoin dont il a besoin pour ces animaux, en pour ensemenier demeurant sujetle, a tontes les charges loix on impositione quil plaira a S. M. d'imposér a l'avenir.

Donne en la ville de St. Louis, le 25 de Juin, de l'annee 1794.

(Sig'a) ZENON TRUDEAU.

Nous Zenon Tradeau, lieutenant gouverneur, commandant en chef civil et militaire de la houte Louisiana, certifions que la concession de la terre, a contre a la reserve de 4 arps., a ete vendu, cedee, et transportee a Louis Labeaume, par un secte, passe par devant nous le 19 de May, de cette presente annee, et depose dans les archives de ce poste.

St. Louis des Illinois, le 12 May, 1798.

ZENON TRUDEAU.

2d concession.

Don ALONZA TRUDEAU, lieutenant gouvern', commandant en chef civil et militaire de la haute Louisiana:

Monsieur Louis Labeaume, avec tout le respect qui vous est du, a l'honneur de tous representer qu'il a acquis du Sr. Joseph Brazeau, habitant de cette ville, un portion de terre, a lui concedei le 20 du mois de Juin de 1794. Cette terre ayant tres pen de profondeur, et le suppliant ayant presque tout mis en culture, necessite d'ailleurs de faire des etablismentes pour la manutention des manufactures qu'il nous apropose, demande qu'il nous plaise lui accorder 360 arps. de profondeur, depuis le Mississippi, en remontant le Ruisseu de pierre 6¼ S. sur 16 arps. de front, le long du Mississippi, a pendre de la descente du chemin dans le Ruisseau ce qui est le meme front de la terre du suppliant. L'angle forme par la perpendiculaire du chemin a fleuve, par le Roisseau et par le fleuve, completra a par pres la terre demande par le suppliant, qui a Monsieur de vous observer que cette terre est absolument depourvree de bois, et ne peut servir qu'a des pasturages dans le suppliant a besoin pour l'entretien des animoux qu'il est oblige el avoir pour ses etablisemant.

(Signed) LOUIS LABEAUME.

292 ST. LOUIS, *de Febrere*, 1799.

Constaudonne que la tierre que se solicita se halla totalmente des provieda de madera, y lena que es mintrosa y certuda de baranois y impropia para el culivo, no perdiendo servin que para el pasto de alguros anamales de que se pue de necessitar para in utilidad d'el dine que se propose, imformo el Sor. Gobr. Gen'l que la concession que se pido sera favorable al interesedo esta circumstancias el Agr. Don Ant. Soulard pendra el expressado en poscion y formalig Gob'r Gen'l el titulo en forma se disca.

(Signed) ZENON TRUDEAU.

Nota.—Las majones de Piedras dispuestos de 20 a de distincia entra ellos con neorumbra a los pies todos arboles que se Halloran fueron marquados de maseus, lib. A., fo. 8, no. 13.

Don Antonio Soulard, A. Gov. par de los estables de la alta Louisiana, certificia que el dos de margo del presente amo (in virtual d'el decreto que antecedo d'el Sen. Don Zenon Trudeau, dementede Gober. de Estos Estable) me ha transfende a la tierre de D. Louis Labaume para tomar in ella la medias de agrimserra, anegla das a supedimiento de 374 a planos de superficie argas medias se hautenando en presencio del proprietario y de los vecinos l'inderos cen la medida de Paris, de 18 pies de largo, segan comtumbre adoptada en esto Provn. de Louisia, cuya se halla situade a 3 m. en el N. de esta villa de St. Luis, lindande par el lado del S. M. par del S. con las tierras de varios habitantes; par el E. con el rio Mississippi; y par el o con les tierras vacantes del Dominie Real; y para que constidende combrege le doy el presente con el plano figurativo, que precede en el equal se indician las dimenciones y limites naturales y artificiales de dicha tierra.

En St. Luis del Illinois, a 10 de April, del anno de 1799.

(Signed) ANTOINE SOULARD,
Agr. Partr.

(See Record Book C, pp. 339 and 340.)

(Here follows proceedings of the old board, Sept. 3*th*, 1806; Sept. 22d, 1810, and June 14, 1811. For which proceedings see page 78 of this transcript.)—Clerk.

Louisiana Commissioners' certificate, No. 982.

JUNE 14, 1811.

We, the undersigned, commissioners for ascertaining and adjusting the titles and claims to land in the Territory of Louisiana, have decided that Louis Labeaume, original claimant, is entitled to a patent, under the provisions of the fourth section of an act of the Congress of the United States, entitled "An act respecting claims to land in the Territory D'Orleans and Louisiana," passed the third day of March, one thousand eight hundred and seven, for three hundred and fifty-
293 six arpents of land, situate in the district of St. Louis, on the Mississippi, and order that the same be surveyed, agreeably to a concession from Zenon Trudeau to Louis Labeaume, recorded in book C, page 339, of the recorder's office. By virtue of a concession or order of survey, from Zenon Trudeau, lieutenant governor.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FR. BATES.

(Here follows commissioners' certificate, No. 683.)

No. 13, Don Louis Labeaume.

Nota.—*a.* Bornes des pierres témoins de mache fer. *b.* Un Liard dans le Ruisseau. *c, d, e, f.* Que desiment l'etendue de terre close par un fosse. *g.* Maison de metre, cabanne, grange, &c. Situee a 3 milles environ, dans le N. de St. Louis; arpentea le 2 Mar, 1799, en vertu des decret de Mr. le Lut. Gen., en datte du 15 Feber, certificial d'arpentage. Expedie le 10 avril.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS,
St. Louis, 20th of April, 1853.

I certify that the above plat and marginal notes and references thereto are correctly copied from page 130 of Registre d'Arpentage, kept in this office.

D. A. SPAULDING,
Surveyor General.

Translation of the above.—Bad Land vacant.

Survey on the 2d of March, 1799, in virtue of the decree from the lieutenant governor, dated the 15th of February.

Certificate of survey delivered on the 15th of April.

Bill of exceptions.

Defendants also offered in evidence the grant and survey to P. Chouteau, and all the proceedings touching the same before the board of commissioners in 1809, as follows:

Pierre Chouteau claims for himself and sons the following tract of land, viz: he claims 70.56 arpents, &c.; he also claims 133 arpents of land on the Mississippi, near the town of St. Louis, about ten miles; granted to him by Don Carlos Dehault Delassus, on the 16th day of October, A. D. 1789.

Chouteau's 2n Claim.

A Don Carlos Dehault Delassus, lieutenant colonel, aggrege, au regm't fixe de la Louisiana, and lieutenant governor de la partie haute de la meme provence, Don Pedro Chouteau, sr., de milice et commandant du fort Carondelet, chez les des Osages, a l'honneur de vous repre-
294 senter, que le manque total demoulins a farine dans ce pays, et la necessite que prescruit la diminution visible due commerce des pelleteries, sont les raisones qui leu ont fait concevior le projet de si livre a celui plus desrable des grains, et qui en meme tems procurera au cultivateur un debouche moins precaire que celui qu'ils ont en pisqua a prescut, a concee le projet de la construction, et un moulin a farine superfine sur bateau, quil compte placer sur le fleuve Mississippi, a environ un mile de cette ville, dans un endroit qui le mettra enlierement a l'abri des glaces; mais considerant que pour former cet etablissment tres dispendieux, il a beson d'or emplacement assey vaste pour la construction de ses magazins, &c.; en consecquence, il a honneur de vous supplier et avoir la bonte de lui accordee au Sieur Antoine Roy, l'etablissment d'un moulin a vent, en annullation des pretentions de Mr. Jacques Clamorgan, sonvait avoir sur la dite terre, pour des raisons mentionnees dans le decret annexe a la vernee, comme il suit: au N. par la ligne de la terre de Mr. Louis Labeaume; au sud par celle du Sieur Ant. Roy; a l'E. par le fleuve, et a l'O. par le Dmne de la Majeste; la ditte terre passant sur

les cotes et à distance de 6 as, de fleuve, se que sera su profondeur, tout a la superficie; elle ne peut etre determine que par le arpentage quil vous plaira d'ordonner. Le suppliant esprere de son pour le service de S. M. et de votre justice qu'il vous plaira favoirser un etablissment qui pourra devenoir utile au public, en lui accordant la grace qu'il solicite.

St. Louis de Illinois, 16 de 8bre de 1799.

(Signed) PIERRE CHOUTEAU.

Visto lo expriesto en el anticedente memorial y en virtual de los justos motivos que representa el supte y en concideracion de un decreto de mi predecessor, el Sr. Lte. Col. Don Zenon Trudeau, de 4 de Agosto de 1697, puerto al pie del memorial del Sr. Anto. Roy de sedende consta que la tierra que sa pied quedaba al Don. Real el Agbr. de esta Luisiana alta, Don Antonio Soulard pondra el exponente en pocesion de la tierra que solicite para que depues de apes, y praticados las operaciones convenientes, se entreque a la parte la correspondiente certificacione de apes, para que la sera a obtener el titulo de concecion en forma, del Senor Intendente Gen. de otas provincias aquien par orden de S. M. corresponde primativamenta el separtir y conceder toda chose de tierras real engas.

(Signed) CARLOS DEHAULT DELASSUS.

(For plat see original page 294.)

Nota.—Los quatros tierrienos y los mojones son de piedra cimentados concession de faguce y indicados en el pla figurativo.

Ascentado al Lib. B, de los cap. de apeos pd decho puesto folio C. n. 6.

Don Antonio Soulard, Agr. Pr. de la Alta Luisianee, certifico que *que* el 10 de Marjo de este presente ano (en virtue del decreto que accompana del Sor. Thento de Gobor. y subdelgade de Re Hacienda, Don Carlos Dehault Delassus, en fecha de 16 de 8bre del ano 1799) me ha transfendo a la tierra de Don Pedro Chouteau para particar el apee areglado supedimiento de 133 arpents planos, cuyas medo das se hautomado en presencia del proprietario y de los occinos linderos, con la percha de Paris de 18 pies de largo.

295

Segun constumbre adoptada en esta provincia de la Luisiana y, sui tocar a loque pueda dor desi la variacion de la Aguja que esde 7 gos y 30 un E como consta del plano figurativo que antecede: cuya tierra se halla situada como a 12 arps al norte de este villa de St. Luis lindado al N. con tierra de Don Luis Labeaume als en partida con otra tierre de Don Antonio Roy, 7 de Jacento Eg. lig. al E. con la avilla del Rio Mississippi, y al O. con las tierras valdias del Domo Real, y para que comte dende combenja le dos el presente con el plano figurativo que precede, en el qual se implican los dimencionas y limites naturales y artificiales que rodeau dua tierra.

En St. Luis de Illinois, a 17 de Junio de 1803.

(Signed) ANTONIO SOULARD, *Agr.*

(See record, Book C, page 377, 378, and 379.)

WEDNESDAY, *January* 25, 1809.

Board met. Present, the Honorable Clement B. Penrose and Frederick Bates, commissioners. The Hon. John B. C. Lucas appeared at the board and took his seat.

Pierre Chouteau, claiming 133 arpents of land, situate on the river Mississippi, near the town of St. Louis, produces to the board a conces-

sion from Don Carlos Dehault Delassus, lieutenant governor, for the same, dated 16 October, 1799, which land claimant petitioned for for the purpose of erecting granaries and other buildings for a floating mill, which he is about to build on the Mississippi. Claimant renounces all claim to 39 arpents and 99 perches of the land claimed, which interferes with the land heretofore surveyed, leaving the quantity at present claimed, 93 arpents and 1 perch. Claimant states that his claim interferes with one Jacque Clamorgan, as assignee of Esther, a mulattress, recorded in book C, page 159, for testimony, &c. (Book No. 1, page 145.)

Sylvester Labbadie, sworn, says, that about 8 years ago he saw two flat-boats, built by claimant at Florissant, for the purpose of erecting a mill; said boats were moved down and mo'red opposite to the land claimed, and a mill was erected thereon by claimant, which mill afterwards went into operation. That about 6 years ago claimant built two barns on the land claimed, which have been used for claimant ever since.

Laid over for decision. Board adjourned.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See book No. 3 of the minutes of the old board, pages 442, 443, 444, and 445.)

206 FRIDAY, *February* 17, 1809.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

On application of Pierre Chouteau for a decision in his claim of 93 arpents and one perch of land, situate above the town of St. Louis, stating that said land has been taken in execution as the property of Jacques Clamorgan, said claim interfering with Jacque Clamorgan as assignee of Esther, a mulattress, recorded in book C, page 159, of the recorder's office; claim of Pierre Chouteau, acted on in book No. 3, p. 443; that of Jacques Clamorgan in book No. 1, p. 485; the claim of Roy also interfering, see book No. 3, p. 374. The board agree to take up the same. On a question being made to take up the claim of Jacques Clamorgan, assignee of Esther, a mulattress, Clement B. Penrose and Frederick Bates, commissioners, voted for it, having reference to the concession on the claim of Antoine Roy for 600 feet square; John B. C. Lucas voted against it, because that said claim is not laid over for decision, and the time given by the board for the taking of testimony on claims is not yet expired. The board are of unanimous opinion that the claim of Jacque Clamorgan, assignee of Esther, mulattress, ought not to be confirmed. In the case of Pierre Chouteau, claiming 93 arpents and 1 perch of land, book No. 4, p. 443.

The board unanimously confirm to Pierre Chouteau 93 arpents and one perch, and order that the same be surveyed so as not to interfere with the field lots of the little prairie adjoining the town of St. Louis. Board adjourned.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See book No. 3 of the minutes of the old board, pages 475 and 476.)

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Certificate No. 71, Pierre Chouteau, book No. 3, p. 476. Survey at expense of the United States. Board adjourned till to-morrow at 8 o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

(See book No. 5 of the minutes of the old board, pages 157 and 159.)

Louisiana commissioner's certificate No. 671.

MAY 29*th*, 1811.

We the undersigned, commissioners for ascertaining and adjusting the titles and claims to land in the Territory of Louisiana, have decided that Pierre Chouteau, original claimant, is entitled to a patent,
297 under the provisions of the fourth section of an act of Congress of the United States entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," passed on the third day of March, one thousand eight hundred and seven, for ninety-three arpents and one perch of land, situate in the district of St. Louis, and order that the same be surveyed so as not to interfere with the field lots of the little prairie adjoining the town of St. Louis, by virtue of a concession or order of survey from Don Carlos Dehault Delassus, lieutenant governor.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See original certificate No. 671, on file.

RECORDER'S OFFICE, ST. LOUIS,
31 *March*, 1848.

I certify the foregoing to be truly transcribed from the books and records (at the pages therein mentioned) and the files of this office.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Mo.

Translation of those parts of the foregoing documents which are in the French and Spanish languages, which translations are herein above copied on page 309.

Bill of exceptions.

To the reading of which, and each of which, the plaintiff at the time objected, on the ground that the same was not competent evidence in this cause, but the court overruled the plaintiff's objections and allowed said grant, survey, and proceedings to be read, and the plaintiff at the time duly excepted.

In rebuttal the plaintiff reads in evidence the following papers: His first protest filed with recorder of land titles, dated Jan'y 22d, 1852.

Protest of John Magwire to recorder of land titles, dated January 22, 1852, which is copied hereinabove on page 239.

Protest of Pierre Chouteau, filed with surveyor general in 1818, copied hereinabove on pages 241.

Letter of Commissioner of General Land Office, dated Jan. 14, 1858, copied hereinabove on pages 244.

Letter of Secretary of Interior to the Commissioner of the General Land Office, dated February 4, 1858, which is copied hereinabove on pages 245.

Deed from Lewis and Bogy to John Magwire, dated June 23, 1846, copied hereinafter on pages 699; and

Letter of Commissioner of General Land Office to recorder of land titles, dated February 8, 1858, which is copied hereinabove on page 246.

Stipulation entered of record.

Stipulation entered of record, copied hereinabove on page 247.

298 *Bill of exceptions.*

The bill of exceptions, filed as aforesaid in this cause, as in the words and figures as follows, to wit:

Bill of exceptions:

JOHN MAGWIRE, PLAINTIFF,
vs.
MARY L. TYLER ET AL.

Be it remembered, that after the finding the facts in this cause and within the proper time, and by leave duly extended the time for filing a motion for review of said findings, by consent of the defendants, as in proper time, the plaintiff filed his motion for a review, which motion for review is in the words and figures following, to wit:

Motion for review.

In the St. Louis land court, March term, 1858.

JOHN MAGWIRE, PLAINTIFF,
vs.
MARY L. TYLER ET AL.

Be it remembered, that on the trial of this cause, which was by consent of all parties submitted to the court without a jury, the following case was made, as appears by the evidence in the cause:

Here insert the paper marked A No. 1, which is annexed and made part thereof, and which contains all the evidence which was introduced by any party on said trial. It was on the said evidence and case, and no other, that the court made the finding of the facts in the cause heretofore entered of record, and on the same case and evidence the plaintiff now moves the court to review the said finding of facts, and to mod'y, change, or annul the same, so far as to make the finding of the facts in the cause to be in all respects as follows:

[Here insert the paper marked B No. 2, hereto annexed and made part hereof.]

And the plaintiff furthermore moves the court, when the facts in the case shall have been found as moved for herein, so to mod'y, change, and annul the finding of the law of the cause, to grant the relief demanded by the plaintiff's petition, and award him the execution therefor by the proper judgment.

KRUM & HARDING.
S. T. & A. D. GLOVER, *for Pl'ff.*

The said motion for review is founded on all the evidence in the cause, which evidence is truly stated in said paper annexed to said motion, marked A No. 1, and made part of the said motion, which includes the said exhibit, marked A No. 1, and the said motion and the paper marked A No. 1 shows the case in full on which the said finding of the
299 facts in said cause was made, and the said motion to review is asked, and the court having duly considered the said motion, and by which the court was asked to mod'y, change, and annul the finding of the facts as heretofore made, and to cause the said finding of the facts to be as mentioned and set forth in the paper annexed to said motion, and marked B No. 2, and made part of said motion, viz:

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

That on the fifth day of October, in the year seventeen hundred and ninety-three, the Spanish government conceded and granted to on Esther, a free mulattress, a tract or parcel of land situate on the borders of the Mississippi River, between that and the earthen barn La Grange de Terre, as stated in the plaintiff's petition; that on the twenty-fifth day of June, in the year 1794, the Spanish government conceded or granted to one Joseph Brazeau a tract or parcel of land of four arpents in front by twenty arpents deep, described and bounded as stated in plaintiff's petition; that the said Brazeau was put in possession of the said tract or parcel of land by said government about the time of said concession, and after said land had been surveyed by one Soulard; that afterwards, on the ninth day of May, in the year 1798, the said Joseph Brazeau, by his deed of that date, sold and conveyed the whole of said tract or parcel of land conceded and granted to him as aforesaid, to one Louis Labeaume, excepting, however, and said Brazeau in his deed reserved to himself, four arpents by four arpents of said tract of land, which four by four arpents, so reserved, were in the southern part of said four by twenty arpents at the foot of the hillock on which stands the earthen barn, (La Grange de Terre,) as stated in the plaintiff's petition; that the said four by four arpents, so reserved by said Brazeau in his deed to said Labeaume, are situate within the limits of the out-boundary line of the village of St. Louis, run in conformity with the first section of the act of Congress making further provision for settling the claims to land in the Territory of Missouri, approved June 1st, 1812.

That after said sale and conveyance to said Labeaume by Brazeau, but prior to the fifteenth day of February, in the year 1799, the said Louis Labeaume petitioned said Spanish government for a grant of three hundred and sixty arpents of land, including that which he had acquired of said Brazeau; that is to say, twenty arpents in depth from the Mississippi river, ascending Rocky Branch west quarter south, by sixteen arpents front along the Mississippi, to be taken from the descent of the road into the creek, as stated in the plaintiff's petition.

That said Spanish government caused the land petitioned for, as aforesaid, by said Labeaume, to be surveyed by one Antoine Soulard, acting surveyor under said government at the time, and in the manner stated in the plaintiff's petition.

300 That the said surveyor made his survey so as to include, and in his said survey did include, the four by four arpents of land which said Brazeau had reserved to himself in his deed to Labeaume. That the board of commissioners for the adjustment of land titles in

the Territory of Missouri, on the twenty-second day of September, in the year eighteen hundred and ten, confirmed to said Joseph Brazeau, or his legal representatives, the said four by four arpents, as stated in plaintiff's petition.

That the said commissioners, on the 14th day of June, in the year 1811, issued their certificate of confirmation No 983, as stated in the plaintiff's petition. That the said Joseph Brazeau, and his wife, on the twenty-sixth day of June, in the year 1816, by their deed of that date, conveyed all their right, title, and interest in said four by four arpents of land to one Pierre Chouteau, which deed was duly recorded, as stated in the plaintiff's petition. That in the month of November, in the year 1817, by the authority of the United States, and under the direction of the surveyor general for the district of Illinois and Missouri, the said four by four arpents of land were surveyed, as stated in plaintiff's petition. That on the first day of June, in the year eighteen hundred and twenty-six, Pierre Chouteau and wife, by their deed of that date, conveyed the said four by four arpents to one George F. Strother, which deed was duly recorded, as stated in plaintiff's petition. That said George F. Strother and wife, on the third day of September, in the year 1830, by their deed of that date, conveyed the said four by four arpents of land to John Mullanphy and John O'Fallon, in trust for the sole use and behoof of the Marine Railway Company, as stated in the plaintiff's petition. That in the month of November, in the year 1840, the said George F. Strother departed this life, and administration, in due course of law, was had on his estate; and, in like due course of law, all the right, title, and interest, and estate of said George F. Strother in and to said four arpents of land were sold by the administrator of said estate, and conveyed to the plaintiff, as stated in the plaintiff's petition.

That on the second day of January, in the year 1852, John O'Fallon, (the said John Mullanphy having before that departed this life,) by authority and direction of said Marine Railway Company, conveyed by deed all the right, title, and interest of said Marine Railway Company to the plaintiff, as stated in his petition. That the said tract of four by four arpents of land, which was confirmed to said Joseph Brazeau, is situated in the northern part of the present city of St. Louis, in the county of St. Louis, on the north side of an old ditch, called and known as Labeaume's south ditch, as stated in the plaintiff's petition, and with the designation and boundaries therein stated.

That all the defendants, respectively, claim title and the right to possess the parts and portions which they do respectively possess and claim of said four by four arpents of land, under one Louis Labeaume, or his legal representatives; and that the defendants do hold, claim,
301 and possess portions of said tract of four by four arpents in the manner and to the extent stated in the plaintiff's petition; and that the said tract of four by four arpents of land at the time of the confirmation thereof to Joseph Brazeau, as aforesaid, was definitely located by the metes and bounds substantially as mentioned and described in the plaintiff's petition.

And from the evidence aforesaid the court is asked further to find that said Labeaume, in February, in the year 1806, filed his claim for confirmation before the said board of commissioners for the adjustment of land titles for the Territory of Missouri, and said board of commissioners, out of the lands so claimed by Labeaume, confirmed to him three hundred and fifty-six arpents, and to Joseph Brazeau four arpents, as stated in the defendant's answer. That said Labeaume made the ditches and inclosures mentioned in the defendant's answer. That under the

said confirmation to said Labeaume, a survey of the tract of land so confirmed was ordered by the Secretary of the Department of the Interior of the United States Government, and in the year 1852, a survey thereof was made under and in pursuance of the instructions of the said Secretary, which survey was so made as to embrace and include within its exterior boundaries the said four by four arpents, reserved by said Brazeau, and to him confirmed, and which survey was afterwards approved on the twenty-sixth day of February, in the year 1852; and thereupon a patent certificate was issued by the recorder of land titles, certifying to the effect that Louis Labeaume, or his legal representatives, were entitled to a patent under said confirmation and survey, for 339 60.100 acres, equal to 399 30.100 arpents. That afterwards, and on the twenty-fifth day of March, in the year 1852, a patent was issued by the Government of the United States, granting said tract of land described in the last-mentioned survey to said Labeaume, or his legal representatives, and to his or their heirs or assigns, saving and reserving, however, any valid adverse rights which may exist to any part thereof, That when said last-mentioned survey was made, and also when said patent was issued, as aforesaid, to said Labeaume, or his legal representatives, the defendants had knowledge and notice that plaintiff claimed to be the legal representative of said Joseph Brazeau, under and in virtue of the deeds and conveyances, and the documents and proceedings set out in the plaintiff's petition, and that he claimed to have and hold the equitable title to said four by four arpents, reserved by said Brazeau in his deed to said Labeaume. And from the evidence aforesaid, plaintiff asks the court further to find that at the time of the last-mentioned survey was made, and said patent was issued, the plaintiff owned, and was rightfully entitled to the said four by four arpents of land confirmed to said Joseph Brazeau as aforesaid, and that the issuing of said patent caused the legal title of said four by four arpents to be vested in the legal representatives of Louis Labeaume, and that the defendants are such legal representatives.

And also to find the law of the cause as is asked in said motion. The court refused to grant said motion and overruled the same, and would not review said findings, and would not find the facts as asked by
302 plaintiff; and plaintiff excepted to the ruling. And the court refused to find the law as asked by the plaintiff, and he again excepted to the ruling of the court.

And the said defendant, during the progress of said cause, took sundry exceptions at the proper time, as noted on the paper annexed to said motion, and Marked A No. 1. And the plaintiff prays that his said several exceptions may be signed, sealed, and made part of the record, which is done.

[SEAL.] C. B. LORD.

The affidavit for appeal as aforesaid in this cause is in the words and figures following, to wit:

JOHN MAGWIRE, PLAINTIFF,
v.
MARY L. TYLER ET AL., DEFENDANT.

In the St. Louis land court.

COUNTY OF ST. LOUIS, *ss:*

John Magwire, plaintiff in the above-entitled cause, being duly sworn

on his oath, states that the appeal in said cause is not made for vexation or delay, but because this affiant believes that he is aggrieved by the judgment and decision of the court.

JOHN MAGWIRE.

Subscribed and sworn to before me, this 2nd day of July, A. D. 1858.
C. A. MANTZ, *Clerk.*

The bond filed as aforesaid in this cause is in the words and figures following, to wit:

Bond.

Know all men by these presents, that we, John Magwire, as principal, and Charles K. Dickson, and John M. Krum, as securities, are held and firmly bound unto Mary L. Tyler and others, defendants, in the suit in this court of John Magwire vs. Mary L. Tyler and others, in the sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at St. Louis, this second day of July, A. D. 1858. The condition of the above obligation is such, that whereas said John Magwire has appealed from the judgment rendered against him, and in favor of said Mary L. Tyler and others, in the St. Louis land court for costs; now, if the said appellant will pay all costs and damages that may be awarded against him, occasioned by such appeal, and shall prosecute his appeal, and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the said St. Louis court to give, and shall, if the judgment or any part thereof be
303 affirmed, comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void; otherwise it shall remain in full force and effect.

JOHN MAGWIRE. [SEAL.]
CHARLES K. DICKSON. [SEAL.]
JOHN M. KRUM. [SEAL.]

Approved by the court, July 2nd, 1858.

C. A. MANTZ, *Clerk.*
By E. P. WALSH, *D. C.*

St. Louis land court, March term, 1858.

Be it remembered that on this second day of July, 1858, personally appeared John Magwire, the principal, and Charles K. Dickson and John M. Krum, the securities in the foregoing bond, and acknowledged that they executed the same for the purposes therein expressed. In witness whereof I have hereto set my hand, and affix the seal of said court at office in St. Louis the day and year last aforesaid.

C. A. MANTZ, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, Charles A. Mantz, clerk of the St. Louis land court, within and for the said county, certify the foregoing transcript to be a true and correct copy of the record and proceedings had, as required, in the case of John Magwire, plaintiff, and Mary L. Tyler and others, defendants, as fully

as the same remains of record in my office. In testimony whereof I hereto set my hand, and affix the seal of our said court, at office in the city of St. Louis, this eleventh day of September, A. D. 1858.

[L. S.] CHARLES A. MANTZ, *Clerk.*

The foregoing transcript of the record and proceedings of said land court was filed in the office of the clerk of the supreme court of State of Missouri, at St. Louis, on the fourteenth day of September, in the year eighteen hundred and fifty-eight. And afterwards, by said supreme court, this cause was continued until the next term. And afterwards, at the March term, 1859, the parties appeared by their respective attorneys and argued this cause, and submitted it to the court for decision. And afterwards, at the term aforesaid, the court ordered that the submission of this cause for decision be set aside, and the cause continued until the next term for re-argument. And afterwards, at the October term, 1859, the parties again appeared by their attorneys, and by their consent the cause was continued until the next term. Afterwards, at the March term, 1860, the parties again appeared by their attorneys and argued this cause, and submitted it to the court for decision.

304 And plaintiff also produced in court a certified copy of survey No. 3342, the grant to the free mulattress, Esther. No objection being made by defendants, said copy of said survey is appended to this transcript.

And afterwards, at the term aforesaid, on the twenty-seventh day of June, 1860, the following further proceedings were had in this cause, to wit:

Appeal from St. Louis land court.

JOHN MAGWIRE, APPELLANT,
vs.
MARY L. TYLER & OTHERS, RESPONDENTS.

Now, at this day, come again the parties herein, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by said land court rendered, be in all things affirmed and stand in full force and effect. And it is further considered and adjudged by the court that said respondents recover against said appellant their costs and charges herein expended, and have therefor execution. And on rendering judgment, as aforesaid, the court gave a written opinion, which is in words and figures as follows, to wit:

This case presents substantially the same questions that were before the court when it was here before. Upon the last trial in the land court all the evidence was submitted, and there was a finding by the court of the facts, but upon this finding the same questions arise as did upon the demurrer to the bill.

It is unnecessary to repeat what I said when the case was here before. Upon the propriety of the location of the Brazeau reservation, by survey under the Secretary of the Interior, in 1852, I give no opinion. I consider the case as decided by the case of Cochran vs. West, and if it should turn out that I am mistaken in the construction given to this, and the decisions of the Supreme Court of the United States, I prefer leaving to that court an examination into the question of location will arise in the event that these decisions have been misunderstood. It has been suggested the survey of Brown, of two tracts in one, may be treated

as the authoritative Government survey, and if so, that there is nothing in the principle determined in Cochran v. West to prevent a correction of the last survey, which located the Brazeau reservation outside of the Labeaume concession, and south of the ditch. But it will be observed that all these surveys, Soulard's, Brown's, and the survey under direction of Secretary Stuart, were all before the court in the case referred to, and the last was regarded by the court as the authentative survey. Upon this ground alone, of res adjudicata, I am for affirming the judgment of the land court.

W. B. NAPTON.

305 Judge Ewing concurs in this opinion.

Scott, Judge. P. Chouteau owned two parcels of land north of St. Louis. One of these tracts was supposed to lie immediately north of and adjoining the other. On the first of June, 1826, Chouteau conveyed to G. F. Strother three tracts of land, by the following descriptions: "All that tract or parcel of land granted to the said Pierre Chouteau in October, 1797, by Carlos Dehault Delassus, Spanish commandant, beginning at Roy's line, running north to Labeaume's south line, and extending from the river to the common fields west; it being intended, hereby, to convey to the said G. F. Strother, his heirs and assigns, all the land contained within the said concession, except that heretofore sold by the said Pierre Chouteau according to his said several contracts, to be limited by the metes and bounds limited and fixed by the intention of the parties at the period of contracting.

And one other tract of land containing four arpents, and running on the river back four arpents, making sixteen arpents, lying between the north line of the first described tract and the south boundary of the tract of land sold by Joseph Brazeau to Labeaume; said sixteen arpents being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by Joseph Brazeau to Pierre Chouteau.

The exceptions in the granting part of the deed in relation to the first tract described have no influence in this controvery, as they all lie south of the land in dispute. On the 3d September, 1830, Strother, by a deed containing an exception not affecting this controversy, conveyed the tract of land he purchased from Chouteau to O'Fallon and John Mullanphy in trust for the St. Louis Marine Railway Company. With the exception above stated, this deed professed to convey to the said trustees the same tracts, pieces, or parcels of land which the said G. F. Strother purchased from Pierre Chouteau by the deed above mentioned, and the description of the tracts in the two deeds correspond in substance, if not in words. On the thirty-first of January, 1851, the St. Louis Marine Railway Company passed the following resolutions:

1st. That the land belonging to or claimed by the St. Louis Marine Railway Company, in the city of St. Louis, and north of what is known as Labeaume's ditch, being four arpents in front on the river, and four arpents in depth, and bounded on the east by the Mississippi River, and south by said Labeaume's ditch, and containing sixteen arpents, be conveyed to John Magwire, and that John O'Fallon, surviving trustee, who holds the legal title to the said land, be, and he is hereby, directed to make said conveyance to said Magwire, and deliver the same.

2d. That on receiving the deed in the last resolution mentioned, said John Magwire execute and deliver to the stockholders of said company an agreement to commence suits, or other proceedings, without delay,
and at his own expense, for the recovery of the land to be con-
306 veyed to him, and on recovering the same, or any part thereof, to

convey to such stockholder such portion of said land as shall be equal to one-fourth of what is represented by the stock such stockholder may hold at the time of said recovery." Magwire entered into an agreement in pursuance of this resolution, and on the 2d of January, 1852, John O'Fallon executed to him a deed in which the land is described as set forth in the foregoing resolutions. Thus it appears that the St. Louis Marine Railway Company has employed the plaintiff to prosecute this suit for the company, and the plaintiff cannot be viewed in a more favorable light than the company itself. Now, the concession to Chouteau, as surveyed by the United States, which is the first tract mentioned in the deed from him to Strother, did not extend so far north as it is made to extend by the Spanish survey made for Chouteau under his concession. The Spanish surveyor bounds this concession on the north by the land of Labeaume, and on the figurative plat accompanying the survey there is marked a ditch as the northern boundary of the survey.

Brazeau originally, under the Spanish government, owned the land which is described as Labeaume's; he sold it to Labeaume, and after Labeaume purchased from Brazeau, he obtained from the Spanish government an extension of the limits of the land he so purchased. Brazeau, in making a sale to Labeaume, reserved to himself four arpents of land, to be taken at the foot of the hillock, in the southern part of the said tract. This hillock is some distance below the ditch marked as the northern boundary of the Spanish survey of Chouteau's concession by Delassus.

The space between a line from the foot of the hillock and the ditch would contain the sum of arpents. This hillock, in the earliest Spanish documents concerning Brazeau's and Labeaume's concession, transfers, and reservations, is called the Grange de Terre. It is a noted object, the locality of which admitted *admitted* of no uncertainty or dispute. In July, 1816, Brazeau conveyed to Pierre Chouteau the reservation of the four by four arpents, in pursuance, as it is alleged in the deed, to a previous sale. This deed describes the tract of four by four as situated in the south part of the concession to Brazeau, which he conveyed to Labeaume.

These facts are narrated, not with a view to locate the four by four tract reserved by Brazeau, and by him sold to P. Chouteau, who conveyed to Strother, and who conveyed to the trustees of the St. Louis Marine Railway Company. They are stated to show that there was a ground of dispute as to the fact whether the four by four should be located north or south of the ditch.

The Government of the United States surveyed and located the four by four tract immediately south of the ditch of Labeaume, and on the twenty-fifth of March, 1852, issued a patent therefor to Joseph Brazeau, or his legal representatives. The plaintiff, John Magwire, claiming to be the representative of Brazeau, refused to receive this patent, because it did not properly locate the four by four tract, placing it south instead of north of Labeaume's ditch; and, during the pendency of the suit, the patent was recalled. In eighteen hundred and fifty-six the pat-
307 ent for the four by four was demanded of the recorder of land titles by Louis G. Picot, trustee of Ann Biddle, who was an original stockholder in the Marine Railway Company, and to whom the said company two lots, in the year 1841, which lots are situated within the boundaries of the to Joseph Brazeau. This demand was made by Picot, as representative of Joseph Brazeau. Under these circumstances, how does the Marine Railway Company, or its agent, Magwire, claim to be the exclusive representatives of Brazeau? Is not

Picot a representative of Brazeau having a prior right to Magwire? Can Magwire, as agent, claiming as agent of the Marine Railroad Company, have rights superior to those who claim by a prior title from the company? Can Magwire insist that, as representative of Brazeau, he is entitled to the land north of the ditch, and thus exclude those who, prior in right to him, claiming to be the same representatives? Magwire only claims the land north of the ditch. Now, if Picot, as representative of Brazeau, is entitled to the land, by a prior title from the Marine Railway Company, whether it is north or south of the ditch, can there be any equity in the subsequent claim of Magwire? If the Government of the United States had a right to locate the four by four; if that location has been made, and a patent issued to Joseph Brazeau, or his legal representatives; if Picot, claiming to be the representative of Brazeau, is entitled to take the land as located by the United States, on what ground shall Magwire, the agent of the Marine Railroad Company, prevent this, after that company had made Picot such representative? The company cannot have land both north and south of the ditch. If it has placed Picot south, and the Government has given him a patent where the company has located him, what right has that company, through its agent, the plaintiff, to deny him the benefit of that patent, and, by seeking for a location of the land elsewhere, violate its faith and obligation to him? These doubts and difficulties suggest themselves to my mind in considering this case. I cannot see how the company, nor its agent, Magwire, can have any equity in this case whilst there is a prior appropriation of the four by four south of the ditch to its alienee. Picot is not before the court; his claim, under the patent, has not yet been presented to us. Whether he has any claim under the patent; whether the officers of the Government could appropriate the land to the satisfaction of the four by four claim; what has been the effect of recalling the patent; whether that act does divest any right previously vested him; whether Magwire, by refusing the patent, could effect his rights, are all questions not presented by the record, and nothing will be said in relation to them, but, it seems to me, will have to be determined before we can ascertain whether there is any equity in Magwire suing for the Marine Railway Company. If the title to the four by four north of the ditch was in the Marine Railway Company, and if it had previously sold and appropriated that tract south of the ditch, and had afterwards defeated the right of her alienee, I do not see why she would not be compelled to hold such title in trust for those who *who* were wronged. I must know what the company has done with the land south of ditch before I can say that *that* there is any equity in Magwire.

308 This is not the former action of ejectment in which the mere legal title is involved, but it is a bill in chancery, and the equity of the party must appear. I do not see that the claim of the plaintiff is strengthened by his deed from Hamilton, the administrator of Strother; it appears to me that that deed was *un*effectual, as Strother, in his lifetime, had conveyed away all his interest in the four by four tract. When this case was here before, I expressed the opinion, founded on a fact, which I supposed I was warranted in assuming by the consent of the plaintiff's counsel, that there was no equity in the bill. Was I in error in supposing that I was warranted in making that assumption? yet the case, as now presented, furnishes ground, as I conceive, for the same opinion. As the case has been tried again since then, and as the same difficulty existed in the way of a recovery on the part of the plaintiff, and he did not see proper to obviate it, but insisted on his

equity, as his bill was framed, I am in favor of an affirmance of the judgment, believing that, under the circumstances, it would be unwarrantable to keep the defendants longer before the court. The judgment must be affirmed, in my opinion. The other judges concur in affirming the judgment.

WILLIAM SCOTT.

And afterwards, to wit, on the 29th day of June, A. D. 1860, said appellant appeared in court and filed a bond in this in words and figures as follows:

Bond.

Know all men by these presents that we, John Magwire, and Jules Valle, and Robert M. Rennick, are held and firmly bound unto Mary L. Tyler, William C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie J. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas I. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Chisty, George W. Goode and Francis S. M., his wife, David D. Mitchell, jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William Wright, Thomas F. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Green and William A. Wright, (trustees of Mary H. Glasgow,) Martha A. Wills, Thomas F. Wright and John C. Wickham, (trustees of Martha A. Wills,) Alfred Dryden and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, Orleana C. Shaumburgh, George Case,
309 George T. Hardcastle and Adelaide, his wife, in the full sum of five hundred dollars, to be paid to the said Mary L. Tyler and other defendants, their heirs, executors, administrators, and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis, this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and sixty.

Whereas lately, at the March term, 1860, of the supreme court of the State of Missouri, in a suit depending in said court, between John Magwire, appellant, and Mary L. Tyler and others, appellee, judgment was rendered against the said John Magwire, and the said John Magwire having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mary L. Tyler and others, citing and admonishing them to be and appear at a Supreme Court of the United Sates, to be holden at Washington, the first Monday of December next; now, the condition of the above obligation is such, that if the said John Magwire shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JOHN MAGWIRE. [SEAL.]
JULES VALLE. [SEAL.]
ROB'T M. RENICK. [SEAL.]

Which said bond is endorsed as follows:

The within bond approved by William Scott, presiding judge of the supreme court within and for the State of Missouri, this twenty-ninth day of June, A. D. 1860.

WILLIAM SCOTT.

STATE OF MISSOURI, *ss:*

I, William S. Glanville, clerk of the supreme court within and for the State of Missouri, held at St. Louis, certify the foregoing to be a full, true, and complete transcript of the record and proceedings of said supreme court in the case of John Magwire, appellant, and against Mary L. Tyler and others, appealed from the St. Louis land court. In witness whereof I hereunto set my hand and the seal of said supreme court, at office, in St. Louis, this eighteenth day of July, A. D. 1860.

WILLIAM S. GLANVILLE, *Clerk.*

Survey No. 3342, which is copied hereinabove on pages

Error to Supreme Court of Mo.

Writ of error to Supreme Court of Mo.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because in the record and proceeding, as also in the rendition of the judgment of a plea, which is in the said supreme court before
310 you, at the March term, 1860, between John Magwire, appellant, and Mary L. Tyler, William C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie J. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas I. Beirne, William L. Ewing, Harriet M. Dean, Matilda N. Taylor, Edwin B. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Goode and Francis S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary, his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Green and William F. Wright, (trustees of Mary H. Glasgow,) Martha A. Wills, Thomas A. Wright and John C. Wickham, (trustees of Martha A. Wills,) Alfred Dryden and Margaret, his wife, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, Orleana C. Schaumburgh, George Case, George Hardcastle and Adelaide, his wife, as appellees, a manifest error has happened to the great damage of the said John Magwire, appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning

the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and sixty.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BENJ. F. HICKMAN,
Clerk C. C. U. S. Mo. Dis.

Allowed by William Scott, presiding judge of the supreme court within and for the State of Missouri, this twenty-ninth day of June, 1860.

WILLIAM SCOTT.

311 THE STATE OF MISSOURI, *ss:*

I, William S. Glanville, clerk of the supreme court within and for said State of Missouri, in obedience to the within writ, do hereby forward to the Supreme Court of the United States, at Washington, a full, true, and complete transcript of the record and proceeding of said supreme court of Missouri, in the case of John Magwire, appellant, against Mary L. Tyler and the others aforesaid, respondents, as fully as the same remains of record and on file in my office.

In testimony whereof I hereto set my hand and the seal of said supreme court, at office in St. Louis, this eighteenth day of July, A. D. 1860.

[L. S.] WM. S. GLANVILLE, *Clerk.*

"X."

Soulard's survey for Labeaume.

The recorded Spanish survey by Soulard for Labeaume, as recorded in the register of arpentage as follows:

(Here follows map marked page 311.)

"Y."

Certificate of commissioners.—No. 982.

Certificate of commissioners of the confirmation to Lewis Labeaume, No. 982, as follows:

We, the undersigned, commissioners for ascertaining and adjusting the titles and claims to land in the Territory of Louisiana, have decided that Louis Labeaume, original claimant, is entitled to a patent, under the provisions of the fourth section of an act of the Congress of the United States, entitled an act respecting claims to land in the Territory of Orleans and Louisiana, passed the third day of March, one thousand eight hundred and seven, for three hundred and fifty-six arpents of land situate in the district of St. Louis, on the Mississippi, and order that

the same be surveyed agreeably to a concession from Zenon Trudeau to Louis Labeaume, recorded in Book C, page three hundred and thirty-nine of the recorder's office, by virtue of a concession or order of survey from Zenon Trudeau, lieutenant governor.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
F. BATES.

"Z."

Petition, order of survey, survey of Soulard for Labeaume tract, in French, with the translations and complete proceedings for the confirmation to Labeaume and Brazeau by the board, as follows:

Which is copied hereinbefore on pages 639.

312 *Testimony of Wm. H. Cozens.*

William H. Cozens, being duly sworn as before, was recalled as a witness, and testified that the lots in the Marine Railway tract, conveyed by the deeds of Ann Biddle to Peter Lindell, (which deeds are above copied in this bill of exceptions,) are included in the Brazeau patent of 1852, and they are in the southern portion of the patent of 1852. All the Marine Railway tract north of Brooklyn and east of Second street are included in the patent of 1852 to Brazeau; block 237 is also within said patent. Witness was asked, on cross-examination, to translate "l'angle," in Labeaume's petition of 1799, and witness says it means triangle.

Testimony of B. A. Hill.

Britton A. Hill, being duly sworn, says that he was counsel for Cochran in the case of West vs. Cochran in the circuit court of the United States in 1853, and that the examplified copy of the original patent from the United States of America to Joseph Brazeau, of 1852, was produced in that court by the recorder of land titles, and read in evidence on the part of the defendants on the trial.

Testimony of C. Gibson.

Charles Gibson, a witness for the defendants, being duly sworn and examined, testified as follows:

Question. Do you recollect seeing the Brazeau patent for four by four arpents, of 1852, in the Interior Department at the city of Washington, in the winter or spring of 1862?

Answer. Yes.

Question. For whom were you acting, and what did you do in regard to that patent?

Answer. I was acting for Mr. Louis G. Picot. Picot demanded the patent, and Magwire refused to allow its delivery. I demanded the patent in 1861, early, about the time Gardenhire made application for a new patent to issue to Brazeau. I went as attorney for Mr. Picot, to the Secretary of the Interior, Caleb Smith, and demanded the patent; he replied that it was not necessary to go further; that if the Supreme Court decided in favor of the defendants, he would deliver the patent to me. I was authorized by all the parties, except Magwire, to demand the patent of the Secretary of the Interior. The Secretary would not decide to give me the patent, until Magwire had another showing in the Supreme Court, and said he would wait for the decision. Caleb B. Smith, the Secretary, was furnished with the copy of the judgment, and

I called with Mr. B. A. Hill upon Smith, and demanded the patent. He said, I will wait and see the opinion. I then got a copy of the opinion, and gave it to Smith, and told him to examine it. I was in Washington all the time, and never was called on or had any opportunity to argue the case before Smith.

313 Up to the day before Smith issued the order for a new survey for Brazeau, I concluded, from what Smith had said to me, that he would deliver to me the patent. No questions were raised about my authority to represent Picot. I saw Smith frequently, and he said on one occasion that he had turned the matter over to Mr. Usher. I then called on Mr. Usher, and called for the patent. I was then told of the report of a new decision. I had no opportunity to argue. But a few minutes elapsed after my talk with Mr. Usher, until I learned that a new survey was ordered.

On cross-examination witness testified: Smith told me he would deliver the patent to me, not to Sturgeon or Picot. I applied for the patent first for Mr. Picot, and Smith informed me of the case made by Mr. Gardenhire. Afterwards Picot said, apply for the patent directly, which I did. The Secretary expressed his opinion to me that new proceedings ought not to be commenced. He promised that if the case was decided for the defendants, to deliver me the patent. He ordered the new survey after he read the opinion of the Supreme Court, and said he regarded the opinion as for Magwire. I filed a brief with Smith, explaining the matter in writing. I was taken by surprise by the manner in which Smith decided the case. I do not wish to impute fraud to Smith.

On re-examination witness testified:

Smith told me in a hasty manner that he had decided for Magwire. It is not my business to impute fraud.

Question. What is your opinion as to whether Smith was guilty of fraud in that decision.

Answer. From all of Smith's previous language and manner, I had been led to suppose that Magwire's application would be refused. And when he told me the contrary, my surprise was very great, and I expressed it, and his manner was such that I concluded there was some secret motive for his decision not appearing on the surface; something that I could not comprehend about it.

On re-cross-examination witness testified:

Smith's manner was hasty, and he seemed to wish to say just as little as possible. I never saw him blush; his manner was such as to convey to me the impression that something was wrong. His actions were quick, uncomfortable, and uneasy. All the arguments of Mr. Hill and others were put in before the Department.

"A A."

Extract from record book Marine R'way Company.

Extract from record book of Marine Railway Company, March 13th, 1841, and 20th March, 1841, as follows:

The defence was here closed.

314 *Plaintiff's evidence in rebuttal.*

The plaintiff thereupon, in rebuttal, read to the court the following evidence, deeds, papers, and testimony, to wit:

Deed from P. Chouteau to Geo. F. Strother.

Deed from Pierre Chouteau to George F. Strother, of 1826, as follows:

This indenture, made the first day June, in the year eighteen hundred and twenty-six, between Pierre Chouteau and Bridget, his wife, and George F. Strother, of the other part, all of the city of St. Louis and State of Missouri, witnesseth: That the said Pierre Chouteau and Bridget, his wife, in consideration of one thousand dollars, to them in hand paid by the said George F. Strother, before ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents doth bargain and sell unto the said George F. Strother, his heirs and assigns, the following tracts or parcels of land, to wit: All that tract or parcel of land granted to said Pierre Chouteau in October, 1799, by Carlos Dehault Delassus, Spanish commandant, beginning at Roy's line running north to Labeaume's south line, and extending from the river to the common field lots, it being intended hereby to convey to the said George F. Strother, his heirs and assigns, all the land contained within the said concession, except that heretofore sold by the said Pierre Chouteau, according to his said several contracts; to be limited by the metes and bounds and fixed by the intention of said parties at the period of contracting. And one other tract of land containing four arpents, running on the river, and running back four arpents, making sixteen arpents, lying between the north line of the first described tract of land and the south boundary of the tract of land sold by Joseph Brazeau to Labeaume; said sixteen arpents being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by Joseph Brazeau to Pierre Chouteau, together with all the houses and appurtenances thereunto annexed. To have and to hold the said several tracts or parcels (pieces) of land with the tenements so intended and bargained to be sold, with every part and parcel thereof, with rights and appurtenances, unto the said George F. Strother, his heirs and assigns forever. And the said Pierre Chouteau and Bridget, his wife, do hereby warrant the same free from the claim of themselves, and their heirs, and all persons claiming under them, except those who now have deeds recorded in the clerk's office of St. Louis, according to the modification of said claims aforesaid described.

In witness whereof the said Pierre Chouteau and Bridget, his wife, have hereunto set their hands and affixed their seals, the day and year first above written.

PIERRE CHOUTEAU. [SEAL.]
SAUCIE CHOUTEAU. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. P. CHOUTEAU.
C. CHOUTEAU.

Record in Book N, page 77.

315 *Deed from L. V. Bogy to J. Magwire.*

Deed from Lewis V. Bogy to John Magwire, 23 June, 1846, as follows:

This deed, made and entered into this twenty-third day of June, eighteen hundred and forty-six, by and between Lewis V. Bogy and Pelagie, his wife, of St. Louis, Missouri, party of the first part, and John Magwire, of the same place, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the

sum of four hundred and seven 50-100 dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does remise, release, and forever quit-claim unto the said party of the second part the following property, viz: A tract of land lying and being north of what is known as Labeaume's ditch, and being the same land conceded to one Joseph Brazeau by the Spanish government, and sold by the said Brazeau to one Pierre Chouteau, and by the said Pierre Chouteau to George F. Strother, by deed dated the first of June, A. D. eighteen hundred and twenty-six, and which deed is recorded in the recorder's office of the county of St. Louis, in Book N, page 77, which said tract of land contains the quantity of sixteen arpents, that is to say, four by four arpents; it being intended hereby to convey to the said party of the second part all of the said (16) arpents of land which may be north of said Labeaume's ditch, but no portion of the same which may be south of said ditch: to have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging, unto him, the said party of the second part, and to his heirs and assigns forever; the said party of the first part hereby covenanting that his heirs, executors, and administrators will warrant and defend the title to the said premises, to him the said party of the second part, his heirs and assigns, against the lawful claim or claims of all persons claiming or to claim the same, or any part thereof, by, from, through, or under the said party of the first part, but not otherwise.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

LEWIS V. BOGY. [SEAL.]
PELAGIE BOGY. [SEAL.]

Done in presence of—

The erasure on the 5th line was done before the signing and delivery.

E. MILTENBERGER.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered, that on this twenty-third day of June, eighteen hundred and forty-six, before me, the undersigned, a justice of the peace in and for said county, personally came Lewis V. Bogy, and Pelagie, his wife, who are personally known to me to be the same
316 persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deeed, for the purposes therein named mentioned; she, the said Pelagie, being by me first made acquainted with the contents of said instrument, acknowledged, on an examination seperate and apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned, freely and without the compulsion or undue influence of her said husband.

Taken and certified the date last aforesaid.

GEO. A. HYDE, *Justice.*

Proceedings of M. R. Co.

Proceedings of Marine Railway Company, of October 19, 1830; of November 2d, 1830; letter of November 4th, 1830; proceedings of April 19th, 1831, and resolutions of company, as follows:

Proceedings of 19th Oct., 1830.

At a meeting of the St. Louis Marine Railway Company: Present,

Messrs. Mullanphy, O'Fallon, Collier, Lindell, Ashley, Biddle, and Clemens:

Resolved, That a committee be appointed to superintend the making of the deed from the United States to the company for the land bought of George F. Strother, esq., also to investigate the title to the same from the records of the county, and ascertain if there be other liens on the same; also, to prepare articles of association for the company, and a petition to be presented to the legislature for incorporation, with permission to employ a lawyer, and report to the next meeting.

Mess. Biddle, O'Fallon, and Collier were appointed the committee.

Adjourned.

ST. LOUIS, *2d November*, 1830.

At a meeting of the St. Louis Marine Railway Company, at the Bank of the United States, this day: Present, Messrs. Mullanphy, Ashley, Biddle, O'Fallon and Clemens:

Resolved, That the four dollars per share on the stock subscribed be paid to the treasurer on demand.

Adjourned.

OFFICE OF ST. LOUIS MARINE RAILWAY COMPANY,
2d November, 1830.

Col. JOHN O'FALLON, Treasurer:

Annexed please find a copy of a resolution of the company of this morning.

Your ob't sev't,

JAMES CLEMENS, JR.,
Sec'y St. Louis M. Railway Company.

317 ST. LOUIS, *3d November*, 1830.

At a meeting of the St. Louis Marine Railway Company at the city hall this day: Present, Messrs. Ashly, (in the chair,) Biddle, Collier, O'Fallon, Page, Rule, Clemens and Lindell:

Resolved, That Gen. W. H. Ashley be requested to have an interview with V. Maxcy, esq., solicitor of the Treasury, and deliver him the title of the company of this date; that he be authorized to offer for a release of the land purchased of George F. Strother, any sum less than seven thousand dollars; that if the proposition is not accepted, that he urge Mr. Maxcy to offer the same for sale at public auction for cash, and if unwilling to offer it then for sale, that he be requested to give the company the option of taking it as now offered.

Adjourned.

ST. LOUIS, *4th November*, 1830.

Gen'l W. H. ASHLEY, present:

Annexed please find a resolution of the St. Louis Marine Railway Company of the 3d instant.

Respectfully,

JAMES CLEMENS, JR., *Sec'y.*

V. MAXCY, Esq., Solicitor of the Treasury, Washington City:

SIR: We have had the honor to receieve your letter of the twenty-eight' September, ult., on the subject of obtaining a release from a mortgage on a piece of land in the neighborhood, purchased from George F.

Strother, and have also had the perusal of your letter of like date, referring the same matter to the district attorney, and we have the opinion of Mr. Shannon, that $8,000 is the value of the property. We have purchased from Strother, under authority of a letter from Mr. Rush to him, and agreed to give $8,000 for the property in three years. You cannot but be aware of the difference between a cash and a credit price in a country where capital is extremely limited. Your declining to take our offer, and requiring cash to be paid, added to the fact that the further examination had produced serious doubt whether the quantity held by Mr. Strother will not be sixteen arpents in lieu of twenty-three, has induced us to wish a further communication with you on the subject. Gen. Ashley being about to leave this for Washington City, we have requested him to have an interview with you and to make these propositions: First, to give for a release in cash $600, or to have the property put up at auction and sold to the highest bidder.

We hope confidently on your speedy answer, as the well-known character of Gen'l Ashley must give you full confidence in his statements on the subject.

On behalf of the St. Louis Marine Railway Company, I have the honor to be your obedient s'v't,

JAMES CLEMENS, JR., *Sec'y.*

V. MAXCY, Esq.

318 ST. LOUIS, 19*th April*, 1831.

At a meeting of the stockholders of the St. Louis Marine Railway Company: Present, Messrs. Lindell, Ashley, O'Fallon, Mullanphy, Biddle, Collier, Page, Rule, & Clemens:

Mr. Lindell in the chair:

Resolved, That Mr. Joseph C. Brown be employed to survey the land owned by the company, under the superintendance of Major T. Biddle and Col. O'Fallon.

Resolved, That the balance of the capital stock of this company, say thirty shares, be sold to Robert Rankin, who is an applicant for the same; and that the president's certificate of his compliance with the ordinances of the company, and the payment to him of twenty per cent. on the amount of the said shares, will entitle him to all the benefits and rights of a stockholder of the St. Louis Marine Railway.

Resolved, That Major Biddle and Col. O'Fallon be a committee to investigate the *the* title of this company, and of conflicting claims, to the land purchased of Col. George F. Strother, and more particularly that part north of the ditch; and that they employ a lawyer for that purpose.

Resolved, That the treasurer pay Mr. J. Mullanphy's account of $3 22, and also that of Mr. P. Leduc, for preparing deeds.

Resolved, That John Thomas, esq., the contractor for the erection of the railway, may be requested to appear before the board at their next meeting, and to produce to them a statement showing the amount of expenditures and the work done on the railway.

Adjourned to meet at this place, the office of the Missouri Insurance Company of St. Louis, on the 21st inst., at eleven o'clock a. m.

A copy of the above resolution was handed Mr. John Thomas.

JAMES CLEMENS, JR., *Sec'y.*

Copy of order of sale of G. F. Strother's estate.

Copy of order of sale of George F. Strother's estate, March, 1846, as follows:

STATE OF MISSOURI, *County of St. Louis, ss:*

At a term of the probate court, begun and held at the city of St. Louis, within and for the county of St. Louis, in the State of Missouri, on the first Monday, being the second day of March, in the year of our Lord one thousand eight hundred and forty-six, were present, Peter Ferguson, judge of said court, William S. McKnight, esq., marshall of the county of St. Louis.

Order of sale.

Alexander Hamilton, administrator of George F. Strother, deceased:

On the petition of Alexander Hamilton, administrator of George F. Strother, deceased, and it being shown to the court that there is
319 no personal estate or effects of said deceased charged with payments of debts, nor sufficient assets in the hands of said administrator to pay the debts due by said estate, and that there is still real estate remaining unsold belonging to the estate of said deceased, the court renew the order of the sale heretofore made, and order that the said administrator do, on the first Monday of May next, at the eastern door of the court-house of the county of St. Louis, and during the sitting of the circuit court of said county, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of that day, expose to sale at public vendue or outcry the following real estate in the petition of said administrator described, to wit: All the right, title, and interest of the said George F. Strother, whatever the same may be, in and to a certain tract of land situate in the city of St. Louis, containing sixteen arpents, running on the Mississippi River four arpents, and running back four arpents; being a tract or parcel of land which the said George F. Strother acquired from Pierre Chouteau and wife, by deed dated June 1st, 1826, recorded in the recorder's office of the county of St. Louis, Book N, page 77, to which deeds reference is made for a more particular description, and sell the same, for the purpose of paying the debts due by the estate of said deceased, for cash, first having had the same appraised, and notice of the time, terms and place of said sale published for four weeks prior thereto in some newspaper in this State, and also by ten advertisements put up in public places in said county twenty days before the day of sale, as directed by law, and that he make return of his proceedings at the term of this court next after such sale.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, A. S. Lindsey, clerk of the probate court of the county of St. Louis, certify that the foregoing is true copy of an order of sale g'anted by said court to Alexander Hamilton, administrator of George F. Strother, deceased, dated March 2d, 1846, as the same appears of record in my office, in records of St. Louis county probate court, Book "K," page 320.

In witness whereof, I hereto set my hand and affix the seal of said court, at office, this fourth day of September, A. D. eighteen hundred and sixty-five.

[L. S.] A. S. LINDSAY, *Clerk.*

[5-cent stamp.]

Testimony of John O'Fallon.

Deposition or testimony of John O'Fallon, as follows:

John O'Fallon, sworn, says he is the same person to whom the deed from Strother was made.

Question asked. What possession the Marine Railway Company took under deed?

Answer. In fall of eighteen hundred and thirty made contract
320 with John Thomas; engaged in that business till eighteen hundred and thirty-two; quit about eighteen hundred and thirty-three. Thomas spent $10,000 for work, &c. The company paid him $10,000. There was the railway extended out north of Mound street; entered river below West's mill; commenced above, a little north of Mound street; shed and machinery, it was horse-power, stationery engine; there were two brick houses occupied by Thomas, as high up as Brooklyn street, erected before died, one a blacksmith shop. The railway crossed Payne's land, purchased of Payne; no occupation north of Brooklyn street; buildings rented; Page built mill with permission of Marine Railway Co. Don't know how much land Page occupied. I ceased to be a member of Co. then. Page was authorized to take possession of all land of company, without rent.

Question asked. What land the Marine Railway Co. claimed north?

(Objected to by Mr. Dayton; admitted.)

Claimed to Martin Thomas's south line; he had two hundred feet front on the river, claimed Brazeau tract. Martin Thomas had 200 or 300 feet front by four arpents deep, i. e., to west line of Brazeau tract, west ine 40 arpen tract, or east line common fields.

The north line of Thomas extended to Labeaume's south ditch. The south line of Marine Railway Company came to Payne's tract. Payne bought of Howard under Carr. I know no occupation north of Brooklyn street, under us. Thomas and built a frame house. Thomas claimed under Esther 4 by 20 arpents; it interfered with our claim; commenced below us. Thomas claimed 200 or 300 feet under Strother and Chouteau. Witness points out on map position of railway south of blue line. Carr's north line was our south line; claimed the whole up to Thomas; heard of other claims; there was a New Madrid claim; we never heard of Chouteau's claim. After partition M. R'way ceased to occupy; I held to 1840; Payne sold out in 1834 or '5; each one got possession in 1842; divided in 1842; some took possession, others refused; I, as executor of Mullanphy, paid taxes on his portion; paid taxes until contest; about 4 or 5 years ago the contest commenced; paid taxes until Supreme Court decided; don't know that any had possession; don't know any survey of Pierre Chouteau.

Cross-examined:

Did not negotiate for purchase of M. R'way tract; M. Mullanphy. Thomas claimed under Esther and Strother. Thomas claimed the Esther, covered it; knew Col. Strother; was a dealer in disputed titles; know where Labeaume's ditch was; Brazeau was north of ditch according to Strother; Strother claimed north; Col. Strother got possession of a lot north; Thomas put Powell in there; appeared to be connected; Powell was tenant of Thomas; put Powell in as under Brazeau claim; I believe Lapsley held it as agent for Mr. Chambers; Thomas dealt in disputed titles; from time M. R'way Co. ceased until lately no one
321 in possession after 1830; gave possession then to Mr. Payne; knew John Biddle; he inherits from Mrs. Biddle; heard her say he was

advised to prosecute; did not say that Mr. Picot was prosecuting at his costs; did not state he was not disposed to prosecute; knew Auguste P. Chouteau from 1820 to death; was in Arkansas; was Indian trader; was away from city most of time; remained very short time; family resided here.

Re-examined:

A. P. Chouteau never told him he claimed the land; no disputed title, but Bogy and Thomas put a tenant in; don't know how long he held possession; managed by Chambers and Thomas; was before Strother sold to me; A. P. Chouteau was not here several years at one time; died in Arkansas more than twenty years ago; were more disputed titles then than now; Strother was connected with Thomas; Thomas purchased of Lapsley; Thomas was in possession; A. P. Chouteau came here sometimes once a year; staid but a short time; came since sale to Strother; never said anything about it; last time he had conversation with Biddle was about time suit commenced in the court, a year or two ago.

It was admitted that plaintiff commenced suits in ejectment to recover possession of the property in question at the November term, 1847, of the St. Louis court of common pleas. These suits were against all the persons in possession of the land, and these defendants were tenants of William Chambers.

Stipulation as to the evidence of the printed record.

The following stipulation as to the evidence of the printed record was signed by the parties, to wit: It is hereby stipulated and agreed by and between the parties to this suit, that the printed record of the case of John Magwire, plaintiff in error, against Mary L. Tyler and others, defendants in error, in the Supreme Court of the United States, No. 210, December term, 1860, and hereto annexed, may be used on the trial of this cause by either party, for the following purposes:

First. Either party may read as evidence in this cause, the testimony of any witness contained in said printed record, subject to all legal objections to the competency or relevancy thereof.

Second. Either party may also read as evidence in this cause any deed, grant, survey, concession, confirmation, or other document or writing contained in said printed record, subject to all legal objections to the competency or relevancy thereof.

Third. Either party may read the orders, judgments, and decrees appearing in said printed record, in evidence, with the same effect as if the same were duly certified by the clerks of the proper courts, under the seal of such courts, subject to the same objections.

Fourth. Either party may, in lieu of the said printed record or in correction thereof, read in evidence the original or certified copies of all deeds, grants, surveys, concessions, confirmations, or other documentary evidence or writing appearing in said record, or relating to the said cause; and also all depositions in perpetuation, subject to the same objections, and introduce any other testimony that may be deemed material in the cause, subject to the same objections.

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Witness our hands this twentieth day of May, A. D. 1863.

BRITTON A. HILL,
Att'y for Def'ts.
JNO. MAGWIRE.

Testimony of L. V. Bogy.

Lewis V. Bogy, being duly sworn, says, that the translation of Labeaume's petition to Zenon Trudeau, commencing at "l'angle," authorizes no other word but "angle" in English. Angle, in English and French are the same. Gen. Milburn was not a Frenchman, and could not speak the language.

Evidence of both parties closed.

The foregoing was all the evidence and testimony and proceedings in this cause on the trial thereof before the court; and all and every and each of said deeds, documents, papers, plats, and depositions, testimony, evidence, records, patents, and all other instruments of writing set forth and copied in the foregoing bill of exceptions, were duly read in evidence on the trial of this cause. And the said cause was, thereupon, upon all of said proofs aforesaid, submitted to the court for decision and decree; the defendants insisting upon all the points made in their answer; and the court thereupon decreed in favor of the plaintiff, as follows:

For decree above referred to, see page 58 of this transcript and following.

Motion for a new trial.

And thereupon the defendants filed within four days after the making and finding of said decree, their motion for a new trial and review, and also their additional reasons in support thereof, as follows: And now come the defendants, and move the court for a rehearing in this cause, and a new trial for the following reasons, to wit:

MAY 31st, 1864.

First. Because the court erred in excluding proper and legal testimony and evidence offered on part of defendants.

Second. Because the court admitted illegal and improper testimony and evidence offered on the part of plaintiff.

Third. Because the judgment and decision of the court is against law and equity, and against evidence, and against the weight of evidence.

323 Fourth. Because the decision and judgment of the court should have been for defendants, instead of for the plaintiff.

Fifth. Because, upon the evidence, testimony, and equities in the case, the plaintiff's bill should have been dismissed.

B. A. HILL & J. R. SHEPLEY,
Def'ts' Atty's.

Additional reasons for new trial.

Which additional reasons for a new trial hereof were filed on the 8th June, 1664, and are as follows, to wit: And the defendants, by their attorneys, Shepley & Hill, for additional reasons in support of their motion already filed for a new trial and review in this cause, state the following: Because the evidence and testimony in this cause fully and conclusively sustained all and every of the denials, averments, and allegations contained in the answer of defendants, and fully controverted

and disproved each and every allegation and averment in plaintiff's petition, and therefore the decree and judgment should have been that the plaintiff's petition be dismissed. And because it was error to hold that the secretary, Caleb B. Smith, had any power to reverse the decision of Secretary Stuart upon the same question, and title, and confirmation, after the elapse of eleven years from the said final decision of Secretary Stuart. And because it was error to hold that the Commissioners of the General Land Office had any power to withdraw the patent of 1852 to Brazeau, after it had been used in courts of justice, and titles had been determined thereunder. And because it was error for the court to hold, that under the act of Congress of 3rd March, 1807, there could be two patents and two surveys for two different tracts of land, under the same confirmation to Joseph Brazeau.

B. A. HILL & J. R. SHEPLEY,
Atty's for Def'ts.

And the defendants insisted upon their said motion, and reasons, and additional reasons for setting aside said decree and judgment in this cause; but the court overruled the same, and refused to grant a new trial or review in this cause. And thereupon the defendants objected and excepted to said decision. And the trial and consideration of this cause before the said court has continued from the day the same was first submitted to said court, until the day of the filing and entering of said decree for the plaintiffs. And the defendants ask that the whole of the foregoing be made a part of the record in this cause.

And the same is done accordingly, as witness my hand and seal, as judge of this court, this sixth day of June, 1864, in the same term of the conclusion of the trial of this cause.

[SEAL.] SAM'L REBER, *Judge, &c.*

324 *Motion for new trial overruled.*

And on the sixth day of June, A. D. 1864, the following further proceedings were had, to wit:

The court having duly heard and considered the motion for a new trial herein, and being thereof sufficiently advised, doth order the said motion be overruled.

And afterwards, at the November term, 1864, the following further proceedings were had, to wit:

Final decree and judgment.

TUESDAY, *February 21st*, 1865.

JOHN MAGWIRE
vs.
MARY L. TYLER, WILLIAM C. TYLER, ELIZA Tyler, Alice Tyler, Emma Tyler, Fannie J. Tyler, Roberta Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelia C. Sharp, Marshall Brotherton, John R. Shepley, Edward D. Hobbs, Alfred Dryden, Margaret Dryden, Elizabeth Gordon, Mi-

nerva Gordon, Mary Gordon, Franklin A. Dick, Louisa R. Brown, James B. Brown, Laura H. Brown, Mary A. Lakenan, James R. Lackland, Harvey S. Parker, James Parker, William E. Shepherd, Catherine Shaffey, Barnett Orick, John Russell, Mary Rice, Nelly Delaney, Rebecca Dodd, Joseph Dennis, Frederick Schulenberg, and Adolph Boeckler.

Now, at this day, come again the parties to this suit, the plaintiff by his solicitor, the adult defendants by their solicitors, and the infant defendants by their guardians, and the said parties submit to the court the defendant's exceptions to the report of the referee, filed herein, said report having been filed by Alexander Martin, esquire, heretofore appointed by the court as referee and commissioner, to take an account of the rents and profits of the premises in question, held and possessed by the defendants respectively: Whereupon, the plaintiff, in open court, voluntarily remits of the findings, assessment, and report of said referee and commissioner, the several sums assessed in respect to the lots and parcels of ground, respectively, as follows, viz:

As to lots four and six, in block No. two hundred and eighty-nine;
325 lots six, forty-six, and fifty-one, in block number two hundred and ninety-two; lots fifty-four and fifty-two, in block number two hundred and ninety-three; lots one hundred and three, one hundred and four, and one hundred and five, in block three hundred and twenty-one, the sum of four thousand and sixty-two 78-100 dollars.

As to lots number eight, in block two hundred and ninety, the sum of one hundred and twenty dollars. As to lot forty-eight, in block number two hundred and ninety-two, the sum of one hundred and sixty dollars. As to lot forty-four, in block number two hundred ninety-three, the sum of one hundred and sixty dollars. As to lots forty-one, fifty-five, and fifty-six, in block number two hundred and ninety-four, the sum of four hundred and forty dollars. As to lot forty-two, in block number two hundred and ninety-four, the sum of one hundred and sixty dollars. As to lots 107, and fifty feet of lot one hundred and six, in block number three hundred and twenty-two, the sum of two hundred and sixty dollars. As to lot one hundred and eight, in block number three hundred and twenty-two, the sum of one hundred and sixty dollars. As to lot seven, in block number 290, two hundred and forty dollars. As to thirty feet of lot one hundred and six, in block number three hundred and twenty-two, the sum of sixty dollars. As to one-half of lot five, in block number two hundred and eighty-nine, the sum of one hundred and twenty dollars. As to lot one hundred and two, in block number three hundred and twenty, the sum of one hundred and sixty dollars. As to lot forty-five, in block number two hundred and ninety-three, the sum of one hundred and sixty dollars. As to one-half of lot number five, in block number two hundred and eighty-nine, the sum of one hundred and twenty dollars. As to lot number forty-three, in block two hundred and ninety-three, the sum of one hundred and sixty dollars. As to lot fifty-three, in block number two hundred and ninety-three, the sum of one hundred and sixty dollars. As to lot fifty, in block number two hundred and ninety-two, the sum of one hundred and sixty dollars. As to lot forty-seven, in block number two hundred and ninety-two, the sum of one hundred and sixty dollars. As to lot one hundred and one, in block number three hundred and twenty, the sum of one hundred and sixty dollars. As to lot num-

ber forty-nine, in block number two hundred and ninety-three, the sum of one hundred and sixty dollars.

And the court, after the remitter made by the plaintiff, of the sums and in the particulars aforesaid, overrules the said exceptions of the defendants to the report of the said referee and commissioner; and the court having fully considered the proofs taken by said referee and commissioner, and being sufficiently advised of and concerning the same, doth order, adjudge, and decree that the interlocutory decree made herein at a former term of this court be, and the same is, made final.

Rents, $6,094 17-100; *M. V.*, $500.

1. And the court doth further order, adjudge, and decree that the plaintiff recover of the defendants Mary L. Tyler, William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fanny S. Tyler, Roberta Tyler, James Guthrie, and William Chambers, the sum of six thousand and ninety-four 17-100 dollars, for the rents and profits of the following-described lots and parcels of the premises described in the plaintiff's petition, to wit: lots number four and six, in block number two hundred and eighty-nine; lots numbered six, forty-six, and fifty-one, in block number two hundred and ninety-two; lots number fifty-four and fifty-two in block number two hundred and ninety-three; and lots number one hundred and three, one hundred and four, one hundred and five, in block number three hundred and twenty-one, and which lots and parcels of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds that the monthly value of said lots and parcels of land to be the sum of five hundred dollars; and it is ordered and decreed by the court that the plaintiff recover of the said last-named defendants the said value, and that the plaintiff have execution against the aforesaid defendants for said rents and profits, for said monthly value, and for the posssession of said above-described land, lots, and parcels of ground.

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Rents, $180 00; *M. V.*, $26 67.

2. And it is further ordered, adjudged, and decreed by the court, that the plaintiff recover from the defendants Mary L. Tyler, William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Frederick Schulenburg, and Adolph Boeckler, the sum of one hundred and eighty dollars for the rents and profits of the following lot and parcel of the premises described in the plaintiff's petition, to wit: lot number eight, in block number two hundred and ninety, and which lot and parcel of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lot and parcel of land to be the sum of twenty-six dollars and sixty-seven cents; and it ordered and decreed by the court, that the plaintiff recover of said last-named defendants the said monthly value, and that the plaintiff have execution for said rents and profits, for said monthly value, and for the possession of said last above-described lot of land against said last-named defendants.

Rents, $240 00; *M. V.*, $53 34.

3. And it is further ordered, adjudged, and decreed by the court, that the plaintiff recover of the defendants Mary L. Tyler, William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler,

James Guthrie, William Chambers, and Rebecca Dodd, the sum of two hundred and forty dollars, for the rents and profits of the following-described lot and parcel of land of the premises described in the petition herein, to wit: lot number forty-eight, in block number two hundred and ninety-two, and which lot of land the last-named defendants had and held possession of before and at the time this suit was instituted; and
327 the court finds the monthly value of said above-described lot of land to be the sum of fifty-three dollars and thirty-four cents; and it is ordered and decreed by the court that the plaintiff recover of said last-named defendants the said monthly value, and that execution issue for said rents and profits, for said monthly value, and for possession of said last above-described lot of land against said last-named defendants.

Rent, 240 00; *M. V.*, $53 34.

4. And the court further orders, adjudges, and decrees that the plaintiff recovers of the defendants Mary L. Tyler, William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Henry S. Parker, and James Parker, the sum of two hundred and forty dollars, for the rents and profits of the following described lot and parcel of land of the premises described in the petition herein, to wit: lot number forty-four, in block number two hundred and ninety-three, and which lot of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lot of land to be the sum of fifty-three 34-100 dollars; and it is ordered and decreed by the court that the plaintiff recover of the last-named defendants the said monthly value, and that execution issue against said last-named defendants for said rents and profits, for said monthly value, and for possession of said last above-described lot of land.

Rent, $660 00; *M. V.*, $53 34.

5. And the court doth further order, adjudge, and decree that the plaintiff recover from the defendants Isaac H. Sturgeon and Thomas L. Sturgeon the sum of six hundred and sixty dollars, for the rents and profits of the following described lots and parcels of the premises described in the petition herein, to wit: three-fourths of lot number forty-one, and lot number fifty-five and fifty-six, in block number two hundred and ninety-four, and which lots of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lots and parcels of land to be the sum of fifty-three 34-100 dollars; and it is ordered and decreed by *by* the court that the plaintiff recover of the last-named defendants the said monthly value, and that execution issue against said last-named defendants for said rents and profits, for said monthly value, and for the possession of said last-described lots of land.

Rent, $240 00; *M. V.*, $34 40.

6. And the court doth further order, adjudge, and decree that the plaintiff recover of the defendants Isaac H. Sturgeon, Thomas L. Sturgeon, Henry S. Parker, and James Parker, the sum of two hundred and forty dollars, for the rents and profits of lot number forty-two, in
328 block number two hundred and ninety-four, said lot being a part of the premises described in the petition herein, and which lot of

land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lot of land to be the sum of thirty-four dollars and forty cents; and it is ordered and decreed by the court that the plaintiff recover of said last-mentioned defendants the said monthly value, and that execution issue against said last-named defendants for said rents and profits, for said monthly value, and for the possession of the last above-described lots of land.

Rents, $390 00; *M. V.*, $55 90.

7. And the court doth further order, adjudge, and decree that the plaintiff recover of and from the defendants Harriet M. Dean and Joseph Dennis the sum of three hundred and ninety dollars, for the rents and profits of the following described lots and parcels of the premises described in the petition herein, to wit: lot number one hundred and seven, and fifty feet of lot number one hundred and six, in block number three hundred and twenty-two, which lots of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lots of land to be the sum of fifty-five dollars and ninety cents; and it is ordered and decreed by the court that the plaintiff recover of the last-named defendants the said monthly value, and that execution issue against said last-named defendants for said rents and profits, for said monthly value, and for the possession of said last above-described lots and parcels of land.

Rent, $240 00; *M. V.*, $34 40.

8. And the court doth further order, adjudge, and decree that the plaintiff recover of the defendants Harriet M. Dean and John Russell the sum of two hundred and forty dollars, for the rents and profits of the following-described lot and parcel of the premises described in the petition herein, to wit: lot number one hundred and eight, in block number three hundred and twenty-two, and which lot of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lot of land to be the sum of thirty-four 40-100 dollars; and it is ordered and decreed by the court that the plaintiff recover of said last-named defendants the said monthly value, and that execution issue against them for said rents and profits, and for said monthly value, and for the possession of said last above-described lot of land.

Rent, $360 00; *monthly value*, $53 34.

9. And the court further order, adjudge, and decree that the plaintiff recover from the defendant William L. Ewing the sum of three hundred and sixty dollars, for the rents and profits of the following described lot and parcel of the premises described in the petition herein, to wit:
329 lot number seven, in block number two hundred and ninety, and which lot of land the last-named defendant had and held possession of before and at the time of the institution of this suit; and the court finds the monthly value of said lot of land to be the sum of fifty-three 34-100 dollars; and it is ordered and decreed by the court, that the plaintiff recover of the last-named defendant the said monthly value, and that execution issue against said last-named defendant for said

rents and profits, for said monthly value, and for possession of said last above-described lot of land.

Rent, $90 00; *M. V.*, $12 90.

10. And the court doth further order, adjudge, and decree that the plaintiff recover from the defendant B. F. Jennings the sum of ninety dollars, for the rents and profits of the following described lot and parcel of the premises described in the petition herein, to wit: thirty feet of lot number one hundred and six, in block number three hundred and twenty-two, and which lot of land the last-named defendant had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lot and parcel of land to be the sum of twelve 90-100 dollars; and it is ordered and decreed by the court that the plaintiff recover of the last-named defendant the said monthly value, and that execution issue against him for said rents and profits, for said monthly value, and for the last-described lot and parcel of land.

Rent, $180 00; *M. V.*, $26 27.

11. And the court doth further order, adjudge, and decree that the plaintiff recover from the defendants Joseph Cochran, Henry S. Parker, and James Parker the sum of one hundred and fifty dollars, for the rents and profits of the following described piece or parcel of the premises described in the petition herein, to wit: one-half of lot number five, in block number two hundred and eighty-nine, and which piece or parcel of land the last-named defendants had and held possession of before and at the time of the institution of this suit; and the court finds the monthly value of said piece and parcel of land to be the sum of twenty-six 67-100 dollars; and it is ordered and decreed by the court that the plaintiff recover of the last above-named defendants the said monthly value, and that execution issue against them for the said rents and profits, for said monthly value, and for the possession of said last above-described lot of land.

Rent, $240 00; *M. V.*, $34 40.

12. And the court doth further order, adjudge, and decree that the plaintiff recover of the defendants Joseph Templeton, Fidelio C. Sharp, and Barnett Orick the sum of two hundred and forty dollars, for the rents and profits of the following described piece or parcel of the premises described in the petition herein, to wit: lot number one hundred
330 and two, in block three hundred and twenty, and which lot of land the last-named defendants had and held possession of before and at the time of the institution of this suit; and the court finds the monthly value of said lot of land to be the sum of thirty-four 40-100 dollars; and it is ordered and decreed by the court that the plaintiff recover from the last-named defendants the said monthly value, and that execution issue against them for said rents and profits, for said monthly value, and for the possession of said last above-described lot of land.

Rent, $240 00; *M. V.*, $53 34.

13. And the court doth further order, adjudge, and decree that the plaintiff recover of the defendant John R. Shepley the sum of two hundred and forty dollars, for the rents and profits of the follwing described

lot and parcel of the premises described in the petition herein, to wit: lot forty-five, in block number two hundred and ninety-three, and which lot of land the last-named defendant had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said last-described lot of land to be the sum of fifty-three 34-100 dollars; and it is ordered and decreed by the court that the plaintiff recover of the last-named defendant the monthly value, and that execution issue against him for said rents and profits, for said monthly value, and for the possession of the last above-described lot of land.

Rent, $180 00; *M. V.*, $26 67.

14. And the court doth further order, adjudge, and decree that the plaintiff recover from the defendants Marshall Brotherton, Elizabeth Gordon, Minerva Gordon, Alfred Dryden, and Margaret Dryden the sum of one hundred and eighty dollars, for the rents and profits of the following described piece or parcel of the premises described in the petition herein, to wit: one-half of lot number five, in block number two hundred and eighty-nine, and which piece or parcel of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said piece or parcel of land to be the sum of twenty-six 67-100 dollars; and it is ordered and decreed by the court that the plaintiff recover of the last-named defendants the said monthly value, and that execution issue against them for said rents and profits, for said monthly value, and for the possession of said last above-described lot of land.

Rent, $240 00; *M. V.*, $53 34.

15. And the court doth further order, adjudge, and decree that the plaintiff recover from the defendants Marshall Brotherton, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Alfred Dryden, Margaret Dryden, Henry S. Parker, and James Parker the sum of two hundred and forty dollars, for the rents and profits of the following described lot, piece, or parcel of the premises described in the petition herein, to wit: lot number forty-three, in block number two hundred and ninety-three, and which lot of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lot to be the sum of fifty-three 34-100 dollars; and it is ordered and decreed by the court that the plaintiff recover of the last-named defendants the said monthly value, and that execution issue against said last-named defendants for said monthly value, for said rents and profits, and for the possession of the last above-described lot of land.

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Rent, $240 00; *M. V.*, $34 40.

16. And the court doth further order, adjudge, and decree, that the plaintiff recover from the defendants Edward D. Hobbs, Henry S. Parker, and James Parker the sum of two hundred and forty dollars, for the rents and profits of the following described lot, piece or parcel of the premises described in the petition herein, to wit: lot number fifty-three, in block number two hundred and ninety-three, and which lot of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court find the monthly value of said lot, piece or parcel of land to be the sum of thirty-four

40-100 dollars; and it is ordered and decreed by the court, the plaintiff recover of the last-named defendant the said monthly value, and that execution issue against said last-named defendants for the said monthly value, for said rents and profits, and for the possession of the said last above-described lot, piece, or parcel of land.

Rent, $240 00; *M. V.*, $34 40.

17. And the court doth further order, adjudge, and decree, that the plaintiff recover from the defendant Franklin A. Dick the sum of two hundred and forty dollars, for the rents and profits of the following described lot and parcel of the premises described in the petition herein, to wit: lot number fifty, in block number two hundred and ninety-two, and which lot of land the last-named defendant had and held possession of before and at the time of the commencement of this suit; and the court finds the monthly value of said lot of land to be the sum of thirty-four 40-100 dollars; and it is ordered and decreed by the court, that the plaintiff recover of the last-named defendant the said monthly value, and that execution issue against the last-named defendant for said rents and profits for said monthly value, and for the possession of the said last above-described lot of ground.

Rent, $240 00; *M. V.*, $53 34.

18. And the court doth further order, adjudge, and decree, that the plaintiff recover of the defendants Franklin A. Dick, William E. Shepherd, Mary Rice, and Nelly Delany the sum of two hundred
332 and forty dollars, for the rents and profits of the following described lot and parcel of the premises described in the petition herein, to wit: lot number forty-seven, in block number two hundred and ninety-two, and which lot of land the last-named defendants had and held possession of before and at the time this suit was instituted; and the court finds the monthly value of said lot of land to be the sum of fifty-three 34-100 dollars; and it is ordered and decreed by the court, that the plaintiff recover of the last-named defendants the said monthly value, and that execution issue against said last-named defendants for said rents and profits, for said monthly value, and for the possession of said last above-described lot of ground.

Rent, $240 00; *M. V.*, $34 40.

19. And the court doth order, adjudge, and decree, that the plaintiff recover of the defendants Louisa R. Brown, James B. Brown, Laura H. Brown, James R. Lackland and Mary A. Lakenan the sum of two hundred and forty dollars, for the rents and profits of lot number one hundred and one, in block number three hundred and twenty, said lot being a part of the premises described in the petition herein, and was held and possessed by the last-named defendants before and at the time this suit was instituted; and the court finds the monthly value of said lot of land to be the sum of thirty-four 40-100 dollars; and it is ordered and decreed by the court that the plaintiff recover of said last-named defendants the said monthly value, and that execution issue for said monthly value, for said rents and profits, and for the possession of said last above-described lot of land.

Rent, $240 00; *M. V.*, $34 40.

20. And the court further orders, adjudges, and decrees, that the plaintiff recover of the defendants Henry S. Parker, James Parker, and Catherine Schoffey the sum of two hundred and forty dollars, for the rents and profits of lot number forty-nine, in block number two hundred and ninety-two, said lot being part and parcel of the premises described in the petition herein, and was had and held in possession by the last-named defendants, before and at the time of the commencement of this suit; and the court finds that the monthly value of said lot to be the sum of thirty-four 40-100 dollars; and it is ordered and decreed by the court that the plaintiff recover from the last-named defendants the said monthly value, and that execution issue against said last-named defendants for said rents and profits, for said monthly value, and for the possession of the lot of land last above described.

The court allows bill of Alexander Martin, esq., referee and commissioner herein, said bill amounting to the sum of three hundred dollars; and it is ordered that the same be taxed, as costs of this suit. The court further orders and adjudges, that the defendants pay all the costs of this cause, and that execution issue therefor.

The defendants file a motion for a rehearing, and to set aside the final decree in this cause, which motion, having been heard and fully considered by the court, is overruled.

333 *2nd bill of exceptions.*

Bill of exceptions filed.

Which bill of exceptions is as follows:

Be it remembered, that on the coming in of the report of the commissioner and referee in this cause, and after the confirmation of said report by the court, the court entered a final decree in this cause, and thereupon the defendants filed the following motion to set aside said decree, and for a rehearing and a new trial, to wit:

Motion for a rehearing and to set aside final decree.

And now come the said defendants and move the court to grant a rehearing, and to set aside the final decree in said cause, and grant the defendants a new trial, for the following reasons, to wit, filed Feb'y 2nd, 1865:

1st. Because the court erred in excluding proper and legal testimony and evidence offered on the part of defendants.

2nd. Because the court admitted illegal and improper testimony and evidence offered on the part of plaintiff.

3d. Because the judgment and decision of the court is against law and equity, and against evidence, and against the weight of evidence.

4th. Because the decision and judgment should have been for the defendants instead of for the plaintiff.

5th. Because upon evidence, testimony, and equities in the case, the plaintiff's bill should have been dismissed.

6th. Because the evidence and testimony in the case fully and conclusively sustains all and every the denials, averments, and allegations contained in the answer of defendants, and fully controverted and disproved all and every allegation and averment in plaintiff's petition, and therefore the judgment should have been that the plaintiff's petition should have been dismissed.

7th. Because it was error to hold that the Secretary of the Interior, Caleb B. Smith, had any power to reverse the decision of Secretary Stuart.

8th. Because it was error to hold that the Commissioner of the General Land Office had any power to withdraw the patent to Brazeau after it has been used in courts of justice, and titles had been determined thereunder.

9th. Because it was error for the court to hold that, under the acts of Congress of 3d March, 1807, there could be two patents and two surveys for two different tracts of land, under the same confirmation, to Joseph Brazeau.

B. A. HILL & S. R. SHEPLEY,
For Def'ts.

And defendants insisted upon the allowance of said motion, and the court overruled the same, and the defendants then and there excepted and objected; and the foregoing proceedings, and the evidence, testimony, and proceedings in this cause, contained in the first bill of
334 exceptions, filed June 6th, 1864, are all the evidence, testimony, and proceedings in this cause; and the matters and things in this bill of exceptions are made a part of the record in this cause.

As witness my hand and seal, this 21st February, 1865.

SAM'L REBER,
Judge, &c.

And afterwards, on the 23d day of February, 1865, the following further proceedings were had, to wit:

Affidavit for appeal, &c., of J. R. Shepley.

Now, at this day, come the defendants, by their attorneys, and on their motion, by attorney, the court orders that no execution issue in this cause until the second day of April next.

The defendant, John R. Shepley, files an affidavit for an appeal, and on his motion an appeal is allowed him to the supreme court from the decree and judgment rendered herein; he thereupon files an appeal bond, conditional according to law, which bond is approved by the court. The defendants, Edward D. Hobbs, Henry S. Parker, and James Parker, also file an affidavit for appeal herein, and on their motion, by attorney, an appeal is allowed them to the Supreme Court from the decree and judgment rendered herein; they thereupon file an appeal bond, conditional according to law, which bond is approved by the court. The defendants, Isaac H. Sturgeon and Thomas L. Sturgeon, file an affidavit for an appeal herein, and on their motion an appeal is allowed them to the supreme court from the judgment herein rendered; they thereupon file an appeal bond, in due form of law, which is approved by the court. Which affidavits for appeal and appeal bonds are in the words and figures following, to wit:

The affidavit is as follows:

Affidavit of Silas Bent, agent for Edward D. Hobbs and Henry S. and James Parker.

COUNTY OF ST. LOUIS, *ss:*

Silas Bent, agent for appellants, being duly sworn, says that the within appeal is not made for vexation and delay, but because the affiant

believes that the appellant is aggrieved by the judgment or decision of the court.

SILAS BENT, *Ag't.*

Sworn to and subscribed before me this 23rd day of February, A. D. 1865.

L. J. PAPIN, *Clerk.*

335 *Appeal bond for Edward D. Hobbs.*

And the bond is as follows:

Know all men by these presents that we, Silas Bent, for Edward D. Hobbs, as principal, and John R. Shepley and Britton A. Hill, as securities, are indebted to John Magwire in the sum of four hundred and eighty dollars, for the payment whereof we binds ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis, this twenty-third day of February, one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas Edward D. Hobbs and his tenants, Henry S. and James Parker, have appealed from the judgment rendered against them, and in favor of John Magwire vs. Mary L. Tyler et al., in the St. Louis court of common pleas, for the sum of two hundred and forty dollars and cents, together with costs: Now, if said appellants shall stay, waste, and prosecute their appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of said court, or any part thereof, be affirmed, that they will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against them by the supreme court, then this obligation to be void; otherwise to remain in full force.

Approved by the court, February 23, 1865.

SILAS BENT. [SEAL.]
JOHN R. SHEPLEY. [SEAL.]
BRITTON A. HILL. [SEAL.]

Attest: LEON J. PAPIN, *Clk.*

Appeal bond of Jno. Shepley.

The appeal bond of John R. Shepley is as follows:

Know all men by these presents that we, John R. Shepley, as principal, and Britton A. Hill and Silas Bent, as securities, are indebted to John Magwire in the sum of four hundred and eighty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly these presents, sealed with our seals, and dated at St. Louis this day of February, one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas John R. Shepley has appealed from the judgment rendered against him, and in favor of John Magwire, in the suit of John Magwire against Mary L. Tyler, John R. Shepley and others, in the St. Louis court of common pleas, for the sum of two hundred and forty dollars and cents, together with costs:

Now, if the said appellant shall stay, waste, and prosecute his appeal

with due diligence to a decision in the supreme court, and
336 shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such court or any part thereof be affirmed, that he will comply with and perform the same, so far as it may be affirmed, and will pay all damages and costs which may be awarded against him by the supreme court, then this obligation to be void; otherwise to remain in full force.

JOHN R. SHEPLEY. [SEAL.]
BRITTON A. HILL. [SEAL.]
SILAS BENT. [SEAL.]

Approved by the court, Feb. 23, 1865.

Attest: LEON J. PAPIN, *Clk.*

Upon the back of the foregoing bond of John R. Shepley is endorsed the following affidavit, to wit:

Affidavit of Jno. R. Shepley for appeal.

COUNTY OF ST. LOUIS, *ss:*

John R. Shepley, appellant, being duly sworn says, that the within appeal is not made for vexation and delay, but because the affiant believes that the appellant is agrieved by the judgment or decision of the court.

JOHN R. SHEPLEY.

Sworn to and subscribed before me this 23d day of February, A. D. 1865.

LEON J. PAPIN, *Clk.*

Appeal bond of Isaac H. Sturgeon and Thos. L. Sturgeon.

The appeal bond of Isaac H. Sturgeon and Thomas L. Sturgeon is as follows:

Know all men by these presents that we, Isaac H. Sturgeon, for himself and as agent for Thomas L. Sturgeon, as principal, and Henry Overstolz and Thomas Cluskey, as securities, are indebted to John Magwire in the sum of eight hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis, this twenty-third day of February, one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas Isaac H. Sturgeon and Thomas L. Sturgeon have appealed from the judgment rendered against them, and in favor of John Magwire, in the suit of John Magwire against Mary L. Tyler and others, in the St. Louis court of common pleas, for the sum of nine hundred dollars and cents, together with costs: Now, if the said appellants shall stay, waste, and prosecute their appeal with due diligence to a decision in the
337 supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such court be affirmed, or any part thereof, that they will comply with, and perform the same, as far as it may be affirmed, and will pay all

damages and costs which may be awarded against them by the supreme court, then this obligation to be void; otherwise to remain in full force.

ISAAC H. STURGEON. [SEAL.]
H. OVERSTOLZ. [SEAL.]
THOS. CLUSKEY. [SEAL.]

Approved by the court, February 23, 1863.
Attest:
LEON J. PAPIN, *Clk.*

Upon the back of the foregoing bond is written the following affidavit, to wit:

Affidavit for appeal of Isaac H. and Thos. L. Sturgeon.

COUNTY OF ST. LOUIS, *ss:*

Isaac H. Sturgeon, for self, and as agent for Thomas L. Sturgeon, appellant, being duly sworn, says that the within appeal is not made for vexation and delay, but because affiant believes that the appellants are agrieved by the judgment or decision of the court.

ISAAC H. STURGEON.

Sworn and subscribed before me, this 23d day of February, A. D' 1865.

LEON J. PAPIN, *Clerk.*

And afterwards, on the 1st April, 1865, the following further proceedngs were had, to wit:

Affidavit for appeal bonds filed and approved, and appeal allowed to supreme court.

SATURDAY, *April 1st*, 1865.

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

The defendants, Mary L. Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Frederick Schulenberg, Adolph Boeckler, Rebecca Dodd, Henry S. Parker, and James Parker, file an affidavit for appeal herein; and on their motion, by attorney, an appeal is allowed them to the supreme court from the judgment and decree rendered herein; they thereupon file an appeal bond conditioned according to law, which bond is approved by the court. The defendants, Henry S. Parker, James Parker, and Catharine Schaffy, as tenants, Louis A. Labeaume, as principal, and file an
338 affidavit for an appeal herein; and on their motion, by attorney, an appeal is allowed them to the supreme court from the judgment and decree rendered herein; they thereupon file an appeal bond, which is in due form of law, and the same is approved by the court. The defendants, Harriet M. Dean, Joseph Dennis, and John Russell, file an affidavit for appeal herein; and on their motion, by attorney, an appeal is allowed them to the supreme court from the judgment and decree rendered herein; they thereupon file an appeal bond, conditioned according to law, which bond is approved by the court. The defendants, Joseph Cochran, Henry S. Parker, and James Parker, file an affidavit for appeal herein; and on their motion, an appeal is allowed them to

the supreme court from the judgment and decree rendered herein against them; they thereupon file an appeal bond, conditioned according to law, which bond is approved by the court. The defendants, Franklin A. Dick, William E. Shepherd, Mary Rice, and Nelly Delany, file an affidavit for an appeal herein; and on their motion, by attorney, an appeal is allowed them to the supreme court from the judgment herein rendered; and they thereupon file an appeal bond, conditioned according to law, which is approved by the court. The defendants, Marshall Brotherton, Elizabeth Gordon, Mary Gordon, Minerva Gordon, Thomas A. Dryden, and Margaret Dryden, Henry S. and James Parker, file an affidavit for an appeal herein; and on their motion, by attorney, an appeal is allowed them to the supreme court from the judgment and decree rendered herein; they thereupon file an appeal bond, conditioned according to law, which bond is approved by the court. The president, Benjamin F. Jennings, files an affidavit for an appeal, and on his motion, by attorney, an appeal is allowed him to the supreme court from the judgment rendered herein; he thereupon files an appeal bond, conditioned according to law, which bond is approved by the court.

Which affidavits for appeal and appeal bonds are in the words and figures following, to wit:

Appeal bond of Mary L. Tyler.

Bond of Mary L. Tyler:

Know all men by these presents that we, Mary L. Tyler, as principal, and Silas Bent and John R. Shepley, as securities, are indebted to John Magwire in the sum of fourteen thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at St. Louis this twenty-third day of February, one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas Mary Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, and tenants, Frederick Schulenberg, and Adolph Boeckler, Rebecca Dodd, Henry S. Parker, and James Parker have appealed from the judgment rendered against Mary L. Tyler, William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler,
339 Fannie S. Tyler, Roberta Tyler, James Guthrie, and William Chambers for $4,062 78-100, [dollars,] and against Mary L. Tyler, William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Frederick Schulenberg, and Adolph Boecker, for one hundred and twenty dollars; and against said Mary L. Tyler, William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, and Rebecca Dodd for one hundred and sixty dollars; and against said Mary L. Tyler, William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, and William Chambers, Henry S. Parker, and James Parker, for one hundred and sixty dollars; and in favor of John Magwire against Mary L. Tyler, and others, in the St. Louis court of common pleas, for the sum of six thousand seven hundred and fifty-four dollars and seventeen cents, together with costs: Now, if the said appellants shall stay, waste, and prosecute their appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such court, or any part

thereof, be affirmed, that they will comply with and perform the same as far as it may be affirmed, and will pay all damages and costs which may be awarded against them by the supreme court, then this obligation to be void; otherwise to remain in full force.

MARY L. TYLER. [SEAL.]
SILAS BENT. [SEAL.]
JOHN R. SHEPLEY. [SEAL.]

Approved April 1st, 1865.

Attest:

LEON J. PAPIN, *Clerk.*

Affidavit for appeal.

The affidavit for appeal is as follows:

Silas Bent, agent for said appellants, being duly sworn, on his oath says that the within appeal is not made for vexation or delay, but because the affiant believes that the appellants are aggrieved by the judgment and decision of the court.

SILAS BENT.

Sworn to and subscribed before me this 23d day of February, 1865.

LEON J. PAPIN, *Clerk.*

Bond of Marshall Brotherton.

Marshall Brotherton's bond is as follows:

Know all men by these presents, that we, Marshall Brotherton, as principal, and Thomas A. Dryden, Margaret B. Dryden, Minerva M. Gordon, Elizabeth A. Voorhies, as securities, are indebted to John Magwire, in the sum of eight hundred and forty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at St. Louis, this day of February, one thousand eight hundred and sixty-five.

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The condition of this obligation is such, that whereas the said Marshall Brotherton, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Thomas Dryden and Margaret Dryden, Henry S. Parker and James Parker, have appealed from the judgment rendered against them, and in favor of John Magwire in the suit of John Magwire against Mary L. Tyler and others, in the St. Louis court of common pleas, for the sum of four hundred and twenty dollars and cents, in the aggregate, together with costs: Now, if the said appellant shall stay, waste, and prosecute their appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such court, or any part thereof, be affirmed, that they will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against them by the supreme court, then this obligation to be void; otherwise to remain in full force.

MARSHALL BROTHERTON. [SEAL.]
THOMAS DRYDEN. [SEAL.]
MARGARET B. DRYDEN. [SEAL.]
MINERVA M. DRYDEN. [SEAL.]
ELIZABETH A. VOORHIE. [SEAL.]

Approved by court this 1st April, 1865.

Attest:

LEON J. PAPIN, *Clerk.*

On the back of which bond is endorsed the following affidavit:

COUNTY OF ST. LOUIS, *ss*:

Marshall Brotherton, appellant, being duly sworn, says that the within appeal is not made for vexation and delay, but because affiant believes that the appellant is aggrieved by the judgment or decision of the court.

M. BROTHERTON.

Sworn to and subscribed before me this 1st day of April, A. D. 1865.

LEON J. PAPIN, *Clk.*

The bond for Franklin A. Dick has appealed from the judgment rendered against him, and against him and his tenants, William E. Shepherd, Mary Rice, and Nelly Delany, and in favor of John Magwire in the suit of John Magwire against Mary L. Tyler, Franklin A. Dick and others, in the St. Louis court of common pleas, for the sum of four hundred and eighty dollars and cents, together with costs: Now, if the said appellant shall stay, waste, and prosecute his appeal with
341 due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such court, or any part thereof, be affirmed, that he will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against him by the supreme court, then this obligation to be void; otherwise to remain in full force.

Approved by court April 1, 1865.

RICHARD A. BARRETT. [SEAL.]
WM. L. BARRETT. [SEAL.]
WM. R. JOUETT. [SEAL.]

Attest:
LEON J. PAPIN, *Clk.*

Affidavit for appeal of F. A. Dick.

On the back of the foregoing bond of F. A. Dick is endorsed the following affidavit, to wit:

Samuel Simmons, being duly sworn, makes oath and says that the within appeal is not made for vexation or delay, but because affiant believes that the appellant is aggrieved by the judgment or decision of the court.

SAMUEL SIMMONS.

Sworn to and subscribed before me this 1st day of April, A. D. 1865.

LEON J. PAPIN, *Clerk.*

Bond for Louis A. Labeaume et al.

The bond of William Booth for Louis A. Labeaume, as principal, is as follows:

Know all men by these presents that we, William Booth, for Louis A. Labeaume, as principal, and Andrew S. Barada and Britton A. Hill, as securities, are indebted to John Magwire in the sum of four hundred and eighty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these pres-

ents, sealed with our seals, and dated at St. Louis this first day of April, one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas Henry S. Parker, James Parker, and Catherine Schaffey, tenants, and Louis A. Labeaume, as principal, has appealed from the judgment rendered against them, and in favor of John Magwire and against Mary T. Tyler and others, in the St. Louis court of common pleas, for the sum of one hundred and sixty dollars and cents, together with costs: Now, if the said appellants shall prosecute their appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such
342 court, or any part thereof, be affirmed, that they will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against them by the supreme court, then this obligation to be void; otherwise to remain in full force.

Approved, April 1, 1865, by court.

WM. BOOTH. [SEAL.]
A. S. BARADA. [SEAL.]
BRITTON A. HILL. [SEAL.]

Test:
LEON J. PAPIN, *Clk.*

On the back of the foregoing bond was endorsed the following affidavit for appeal, to wit:

COUNTY OF ST. LOUIS, *ss:*

William Booth, agent in this behalf, for appellant, duly sworn, says that the with appeal is not made for vexation and delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

WM. BOOTH.

Sworn to and subscribed before me this 1st April, A. D. 1865.
LEON J. PAPIN, *Clk.*

Bond for H. M. Dean et al.

The bond of Britton A. Hill, for Harriet M. Dean & al., is as follows:

Know all men by these presents that we, Britton A. Hill, for Harriet M. Dean, as principal, and Marshall Brotherton and John R. Shepley, as securities, are indebted to John Magwire in the sum of twelve hundred and sixty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at St. Louis this first day of April, one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas Harriet M. Dean, for herself and tenants, Joseph Dennis and John Russell, has appealed from the judgment rendered against her and her tenants, and in favor of John Magwire against Mary L. Tyler and others in the St. Louis court of common pleas, for the sum of six hundred and thirty dollars and cents, together with costs: Now, if the said appellant shall stay, waste, and prosecute her appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be

given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such court, or any part thereof, be affirmed, that she will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against her by the
343 supreme court, then this obligation to be void; otherwise to remain in full force.

Approved, April 1, 1865, by court.

BRITTON A. HILL. [SEAL.]
M. BROTHERTON. [SEAL.]
JOHN R. SHEPLEY. [SEAL.]

Test:

LEON J. PAPIN, *Clk.*

Affidavit of Harriet M. Dean et al.

On the back of the foregoing bond is endorsed the following affidavit, to wit:

COUNTY OF ST. LOUIS, *ss:*

Britton A. Hill, attorney for the defendant, Harriet M. Dean, being duly sworn, says that the within appeal is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

BRITTON A. HILL.

Sworn to and subscribed before me this first day of April, 1865.

LEON J. PAPIN, *Clerk.*

Bond for Louisa B. Brown et al.

The bond for the defendants, Louisa Brown et al., is as follows, to wit:

Know all men by these presents, that we, James R. Lackland, by his attorney in fact, as principal, and W. C. Jameson and M. Brotherton, as securities, are indebted to John Magwire in the sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at St. Louis this thirty-first day of March, one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas Louisa B. Brown, James B. Brown, Laura H. Brown, James R. Lackland, and Mary A. Lakenan, have appealed from the judgment rendered against them, and in favor of John Magwire, in the suit of John Magwire against Mary L. Tyler et al., in the St. Louis court of common pleas, for the sum of two hundred and forty dollars and cents: Now, if the said appellants shall stay, waste, and shall prosecute their appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or as such supreme court may direct the St. Louis court of common pleas to give; and if the judgment of such court, or any part thereof, be affirmed, they will comply with and perform the same so far as it may be affirmed, and
344 will pay all damages and costs which may be awarded against

them by the supreme court, then this obligation to be void; otherwise to remain in full force.

Approved by court, April, 1, 1865.

JAMES R. LACKLAND, [SEAL.]
Per WILLIAM C. JAMISON,
His Attorney in fact.
WILLIAM C. JAMISON. [SEAL.]
M. BROTHERTON. [SEAL.]

Test:

LEON J. PAPIN, *Clk.*

On the back of the above bond there is endorsed the following affidavit, to wit:

STATE OF MISSOURI, *County of St. Louis, ss:*

William C. Jamison, agent of the within parties, being duly sworn, makes oath and says that the within appeal is not made for vexation or delay, but because affiant believes that the appellants are aggrieved by the judgment and decision of the court.

WILLIAM C. JAMISON.

Sworn to and subscribed before me this 1st day of April, 1865.

LEON J. PAPIN, *Clk.*

Bond of Benj. F. Jennings.

The bond of Benjamin F. Jennings is as follows, to wit:

Know all men by these presents, that we, Britton A. Hill, for Benjamin F. Jennings, as principal, and , as securities, are indebted to John Magwire in the sum of one hundred and eighty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at St. Louis this first day of April, one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas Benjamin F. Jennings has appealed from the judgment rendered against him, and in favor of John Magwire, in the suit of John Magwire against Mary L. Tyler and others, in the St. Louis court of common pleas, for the sum of ninety dollars and cents, together with costs:

Now, if the said appellant shall stay, waste, and prosecute his appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such court be affirmed, that he will comply with and perform the same so far as it may by affirmed, and will pay
345 all damages and costs which may be awarded against him by the supreme court, then this obligation to be void; otherwise to remain in full force.

Approved by court, April 1, 1865.

BRITTON A. HILL. [SEAL.]
M. BROTHERTON. [SEAL.]
JOHN R. SHEPLEY. [SEAL.]

Attest: LEON J. PAPIN, *Clk.*

On the back of the foregoing bond is endorsed the following affidavit, to wit:

Affidavit for appeal for B. F. Jennings.

COUNTY OF ST. LOUIS, *ss:*

Britton A. Hill, appellant, being duly sworn, says that the within appeal is not made for vexation and delay, but because affiant believes that the appellant is aggrieved by the judgment and decision of the court.

BRITTON A. HILL.

Sworn to and subscribed before me this first day of April, 1865.

LEON J. PAPIN, *Clk.*

Bond for Jos. Cochran.

The bond of Jos. Cochran is as follows:

Know all men by these presents that we, Henry S. Parker, as principal, and Marshall Brotherton and Thomas A. Dryden, as securities, are indebted to John Magwire in the sum of three hundred and sixty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at St. Louis, this of , one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas Joseph Cochran, Henry S. Parker, and James Parker have appealed from the judgment rendered against them, and in favor of John Magwire in the suit of John Magwire against Mary L. Tyler and others, in the St. Louis court of common pleas, for the sum of one hundred and eighty dollars and cents, together with costs: Now, if the said appellants shall stay, waste, and prosecute their appeal with due diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of common pleas to give, and if the judgment of such court, or any part thereof, be affirmed, that they will comply with and perform the same, so far as it may be affirmed, and will pay all damages and costs which may be awarded against them by the supreme court, then this obligation to be void; otherwise to remain in full force.

Approved by court the first day of April, 1865.

HENRY S. PARKER. [SEAL.]
M. BROTHERTON. [SEAL.]
THOMAS D. DRYDEN. [SEAL.]

Attest: LEON J. PAPIN, *Clk.*

346 *Affidavit for appeal for Jos. Cochran et al.*

COUNTY OF ST. LOUIS, *ss:*

Henry S. Parker, agent in this behalf for appellants, duly sworn, says that the within appeal is not made for vexation and delay, but because the affiant believes that the appellants are aggrieved by the judgment or decision of the court.

HENRY S. PARKER.

Sworn to and subscribed before me this first day of April, A. D. 1865.

LEON J. PAPIN, *Clk.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Leon J. Papin, clerk of the St. Louis court of common pleas within and for the county aforesaid, certify the above and foregoing to be a full, true, and complete copy of the record and proceedings in the above-entitled cause, as fully as the same remains in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court at office, in the city of St. Louis, this 29th September, A. D. 1865.

[L. S.] LEON J. PAPIN, *Clerk.*

[Five-cent stamp.]

THE STATE OF MISSOURI, *ss:*

The State of Missouri to the honorable the judge of the court of common pleas in said State, greeting:

Whereas in the record and proceedings in a certain cause lately pending in the said court, wherein John Magwire was plaintiff, and Mary L. Tyler, William L. Ewing, and others were defendants in a civil action, manifest error hath intervened, to the great damage of said William L. Ewing, as by his complaint we are informed:

Now, being willing that the error, if any there be, should be corrected and full and speedy justice done to the parties aforesaid in that behalf, command you, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remains of record before you in said court, so that we may have them before us at our supreme court, to be begun and held in the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March, so that our judges of our supreme court, on inspecting the record and proceedings aforesaid, may cause to be further done therein for correcting the error, what of right and according to law ought to be done.

Witness O. T. Fishback, clerk of our said supreme court, at office in the city of St. Louis, the 9th day of March, in the year of our Lord one thousand eight hundred and sixty-seven.

[L. S.] O. T. FISHBACK, *Clerk.*

347 STATE OF MISSOURI, *County of St. Louis, ss:*

I, F. A. H. Schneider, clerk of the circuit court of St. Louis County, within and for the county aforesaid, in obedience to the mandate of the within writ, herewith transmit to the honorable supreme court of the State of Missouri, held at St. Louis, a full, true, and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remains of record and on file in my office, being the same transcript heretofore filed in said supreme court.

In testimony whereof I set my hand and affix the seal of said court, at office in the city of St. Louis, this 16th day of March, 1867.

[L. S.] F. A. SCHNEIDER, *Clerk.*

[Five c't stamp.]

And afterwards, to wit, at the October term of said court, A. D. 1865, the following further proceedings were had in said cause, to wit:

TUESDAY, *October 24th*, 1865.

Assignments of errors filed.

* * * * * *vs.* * * * * * *
MAGWIRE " TYLER AND ALS.
* * * * " * * * *
* * * * " * * * *

And afterwards, to wit, at the March term, A. D. 1867, of said court the following further proceedings were had in said cause, to wit:

Motion for certiorari filed.

TUESDAY, *March 20th*, 1866.

JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER ET ALS., APPELLANTS.

Suggestion of diminution of record and motion and affidavit for certiorari filed.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Motion for cer't sust'd.

MONDAY, *March 26th*, 1867.

The court having heard and fully considered the motion for writ of certiorari herein, doth sustain the same, and orders that a certiorari
348 issue against the clerk of the St. Louis court of common pleas, to compel him to amend the transcript herein, or show cause why the same should not be amended.

And afterward, to wit, at the October term of said court, A. D. 1866, the following further proceedings were had in said cause, to wit:

Certiorari awarded.

MONDAY, *December 3d*, 1866.

It is suggested and shown to the satisfaction of the court, that there is a diminution of the record in this cause, and it is therefore ordered that a certiorari issue herein to amend the same.

And afterwards, to wit, at the March term, A. D. 1867, of said court, the following further proceedings were had in said cause, to wit:

Ass'g'm'nt of errors filed.

WEDNESDAY, *March 20th*, 1867.

* * * * *vs.* * * * *
* * * * *vs.* * * * *
JOHN MAGWIRE
vs. } Assignments of errors filed.
MARY L. TYLER ET ALS.
* * * * *vs.* * * * *
* * * * *vs.* * * * *

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Arg'm't progressed.

MONDAY, *March 25th*, 1867.

JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER ET ALS., APPELLANTS.

Now, again come the parties, by their attorneys, whereupon the argument progresses, and not being finished, is laid over till to-morrow, the 26th inst.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Arg'm't progressed.

TUESDAY, *March 26th*, 1867.

Now, again come the parties, by their attorneys, whereupon the argument of this cause progresses, and not being finished, is laid over till to-morrow, the 27th inst.

349 And afterwards, at the same term of said court, the following further proceedings were had, to wit:

Arg'mt progressed.

WEDNESDAY, *March 27th*, 1867.

Now, again come the parties, by their attorneys, whereupon the argument of this cause progresses, and not being finished, is laid over till to-morrow, the 28th instant.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Arg'mt progressed.

THURSDAY, *March 28th*, 1867.

Now, again come the parties aforesaid, by their attorneys, whereupon the argument of this cause progresses, and not being finished, is laid over till to-morrow, the 29th inst. Brief of appellant's filed.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Arg'mt progressed and finished by sub.

FRIDAY, *March 29th*, 1867.

Now, again come the parties, by their attorneys, whereupon the argument of this cause progresses, and being finished, this cause is submitted to the court.

And afterwards, at the same term of said court, the following judgment was rendered in said cause, to wit:

Judgment St. Louis com. pleas court reversed.

MONDAY, *April 15th*, 1867.

JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER, WILLIAM C. TYLER, ELIZA Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Robert S. Tyler, James Guthrie,

William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Marshal Brotherton, John R. Shepley, Edward D. Hobbe, Alfred Dryden, Margaret Dryden, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Franklin A. Dick, Louisa R. Brown, James B.
350 Brown, Laura H. Brown, Mary A. Lakenan, James R. Lackland, Harvey S. Parker, James Parker, William E. Shepherd, Catharine Shaffey, Barnett Orrick, John Russell, Mary Rice, Nelly Delaney, Rebecca Dodd, Joseph Dennis, Frederick Schulenberg, and Adolph Bœckler, appellants. } Appeal from St. Louis court of common pleas.

Now, again come the parties aforesaid, by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis court of common pleas be reversed, annulled, and for naught held and esteemed, but that this cause be dismissed, and that the respondent take nothing by his suit in this behalf, but that the appellants go thereof without day, and recover of the said respondent their costs and charges herein expended, and have execution therefor.

Opinion filed.

And afterwards, to wit, on the 25th day of April, A D. 1867, the said respondent appeared in court and filed a bond, which is in the words and figures following, to wit:

Bond.

Know all men by these presents, that we, John Maguire, as principal, and Charles K. Dickson and J. Valle, as sureties, are held and firmly bound unto Mary L. Tyler, and William C. Tyler, Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Edward D. Hobbs, Marshall Brotherton, John R. Shepley, Alfred Dryden and Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Franklin A. Dick, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary A. Lakenan, James R. Lackland, Henry S. Parker, James Parker, William E. Shepherd, Catharine Shaffey, Barnett Orrick, John Russell, Mary Vice, Nelly Delaney, Rebecca Dodds, Joseph Dennis, Frederick Schulenberg, and Adolph Boeckler, in the full and just sum of fifteen hundred dollars, to be paid to the said obligees, their heirs, executors, adminis'tors, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the 25th day of April, in the year of our Lord, one thousand eight hundred and sixty-seven.

Whereas, lately, at the March term, 1867, of the supreme court in the State of Missouri, in a suit depending in said court between
351 the said John Magwire, appellant, and the said Mary L. Tyler and the other obligees above-named, are appellees, judgement

was rendered against the said John Magwire for costs, and his suit was dismissed; and the said John Magwire having obtained a writ of error of the said court to reversed in the judgement in the aforesaid suit, and a citation directed by the said Mary L. Tyler, and the other of said obligees aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said John Magwire shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JNO. MAGWIRE. [SEAL.]
CHARLES K. DICKSON. [SEAL.]
JULES VALLE. [SEAL.]

Sealed and delivered in presence of—

Approved by

DAVID WAGNER,
Presiding Judge Sup. Ct. Mo.

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the supreme court held at St. Louis, of the State of Missouri, certify that the above and foregoing six hundred and thirteen pages of manuscript contain a full, true, and complete copy of the record and proceedings in the above-entitled cause, as fully as the same remains of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office in the city of St. Louis, this nineteenth day of June, A. D. eighteen hundred and sixty-seven.

[SEAL.] O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *Dep.*

[5 ct. stamp.]

$350 00, costs of this transcript, paid by John Magwire.

O. T. FISHBACK, *Clerk.*
Per E. P. McCARTHY, *Dep.*

In the Supreme Court of the United States.

JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

The following contains translations of the petition, order of survey, and concession to Joseph Brazeau:

(*Exhibit D.*)

Petition of Joseph Brazeau, June 1st, 1794.

352 To Mr. Zenon Trudeau, captain of the stationary regiment of Louisiana, lieutenant governor, and commander-in-chief of the western part of Illinois, Joseph Brazeau, a citizen of this post of St. Louis, hereby supplicates, and has the honor to represent that he wishes to obtain in the western part of this town a tract of land situate beyond the foot of the mound called the La Grange de Terre, of four arpents in width, which are to extend from the steep bank or beach (ecore) of the Mississippi River, in the west quarter southwest, by about twenty ar-

pents in depth, that shall begin at the foot of the hill on which stands the said Grange de Terre, ascending in a northwest course to the environs of Stoney Creek, so that the said tract hereby asked for be bounded on the east side by the bank of the Mississippi, and on the other sides in part by the King's domain and in part by lands reunited to said domain, on which lands now lies the present concession, in order that the petitioner may cut hay on it for his cattle, and sow it with grain, and the petitioner shall never cease to be thankful for your goodness.

St. Louis, 1st of June, 1794.

(Signed) JOSEPH BRAZEAU.

(*Exhibit E.*)

We, lieutenant governor and commander-in-chief of the western part of Illinois, after having ascertained that the land asked for belongs to the domain of His Majesty, and on account of the abandonment which the ancient owners have made of it, and the other part not having ever been conceded, and that the whole is not prejudicial to anybody, do therefore certify to have put Joseph Brazeau in possession of the parcel of land designated in his petition of four arpents front by twenty arpents deep, which shall extend in a north-northwest course from the foot of the hill where stands the Grange de Terre, ascending to the vicinity of the Rouisseau de Pierre, (Stoney Creek,) bounded on one side by the bank of the Mississippi, and the opposite side by the lands not conceded or reunited to His Majesty's domain; and at the two ends, bounded on the north-northwest by the vicinity of Rocky Creek, and the other in the south-southeast shall be bounded by the land granted to the free mulatress named Esther; and in order to certify the same, we have delivered these presents to serve, in the town of St. Louis of Illinois, this tenth of June of the year 1794.

(Signed) ZENON TRUDEAU.

(*Exhibit F.*)

Concession to Joseph Brazeau, June 25th, 1794.

I, Don Zenon Trudeau, captain in the stationary regiment of Louisiana, lieutenant governor, and commander-in-chief of the western division of Illinois, in consequence of the demand made by Joseph Brazeau, residing in this town of St. Louis, in his petition dated the first of this month, and after I had put him in possession, according to the decree I have drawn hereabove, on the tenth of the same month, have conceded,
353 and I do concede, to the said Joseph Brazeau, in fee simple for him, his heirs, assigns, or whoever may represent his rights, the tract of land hereabove designated of four arpents front by twenty arpents deep, situated north of this town; which [twenty arpents] shall begin beyond the mound called La Grange de Terre, extending north-northwest to the environs of Rocky Branch; bounded on one side by the bank of the Mississippi River, and on the opposite side by lands reunited to the King's domain, through which lands passes the present concession, of which one end is to be bounded by the concession of the free mulatress, named Esther; in order that the said Brazeau may cut on it the hay wanted for his cattle, or sow it with grain; said concession remaining liable to all the charges, laws, or impositions which it shall please His Majesty to impose in future.

Given in the town of St. Louis this twenty-fifth of June, in the year 1794.

(Signed) ZENON TRUDEAU.

The following contains translations of Labeaume's petition, order of survey and survey; also proceeding before the board; the survey from register de arpentage.

(*Exhibit H.*)

Petition of Louis Labeaume—second concession.

To Don Zenon Trudeau, lieutenant governor, and civil and military commander-in-chief of Upper Louisiana:

SIR: Louis Labeaume, with all due respect, has the honor to represent to you that he has acquired from Joseph Brazeau, a resident of this town, a parcel conceded to him on the 20th of the month of June, 1794. This tract having but a very limited depth, and the petitioner having nearly put the whole in cultivation, besides the necessity for for him to make establishments for the maintenance (manutention) of the manufactures which he has proposed to you, asks that you be pleased to grant to him 360 arpents of land, including that which the petitioner acquired from Brazeau—that is to say, twenty arpents in depth from the Mississippi, ascending Rocky Branch west quarter south, by sixteen arpents front along the Mississippi, to be taken from the descent of the road into the creek, which is the same front of the petitioner's land. The angle made by the perpendicular line from the road to the river, by the creek and by the river, will about complete the *quantity* of land asked for by the petitioner, who has the honor to observe to you, that this land is entirely barren of wood, and can serve but as a pasture, wanted by the petitioner for the maintenance of the cattle he is obliged to keep for his establishment.

(Signed) LOUIS LABEAUME.

354 (*Exhibit I.*)

Order of survey for Louis Labeaume.

ST. LOUIS, 15*th of February*, 1799.

Whereas it is evident that the land solicited is totally deprived of timber and wood, is hilly, broken by ravines and unfit for cultivation, and can serve only for the pasturing of the cattle necessary for the use of the mill which is contemplated, I inform the governor general that the concession asked for will prove useful to the interested, as likewise to this town, without being prejudicial to anybody, and considering these circumstances, the surveyor, Don Antoine Soulard, shall put the interested in possession and make out his survey in continuation, in order to serve to solicit from the governor general the title in form which he desires.

ZENON TRUDEAU.

(*Exhibit J.*)

I, Antoine Soulard, surveyor particular of the establishment of Upper Louisiana, do certify, that on the second of March, of the current year, (in virture of the foregoing decree from Don Zenon Trudeu, lieutenant governor of these settlements,) I went on the land of Louis Labeaume, to execute the survey of the same, conformably to his petition for three hundred and seventy-four superficial arpents. Said survey was made in presence of the proprietor and of the adjoining neighbors, with the

perch of the city of Paris, eighteen feet in length, according to the custom adopted in this province of Louisiana. This land is situate at three miles in the north of this town of St. Louis, bounded on the north side by the bank of Rocky Branch and the domain of His Majesty, on the south side by the lands of divers inhabitants, on the east side by the river Mississippi, and on the west side by vacant lands of the royal domain; and in order that all that is above written may be available whenever needed, I give the present certificate, with the foregoing figurative plat, on which are designated the dimensions and the natural and artificial boundaries of said land.

In St. Louis, of Illinois, the tenth of April, of the year 1799.

(Signed) ANTOINE SOULARD,
Acting Surveyor Particular.

(*Exhibit K.*)

Certificate of the sale by Joseph Brazeau to Louis Labeaume.

I, Don Zenon Trudeau, lieutenant governor, commander-in-chief, civil and military, of Upper Louisiana, do certify that the above concession, except four arpents, have been sold, ceded, and transferred to Louis Labeaume, by deed proven before us, the ninth of May, of this year, and deposited in the archives of this post.

In St. Louis, of Illinois, the twelfth of May, 1798.

(Signed) ZENON TRUDEAU.

355 Claims filed by Louis Labeaume with the recorder of land titles, February 26, 1806.

Abstract from the list of lands claimed by Louis Labeaume, and of which the titles, concessions, plats, scales, and certificates of scales.

The following is the survey and translation thereof, by order of Gov'r Delassus, of Octo. 19, 1799.

(Here follows map marked page 616.)

NOTA.—Los quatros terminos, y los majones son de piedra, cimentados con escoria de fragua, y indicados en el plano figurativo.

Asentado al Lib B, de los expediciones de apes Sa d'no puerto folio 6, No. 6.

D'n A'nt Soulard, Ag'r Part de la Alta Luisiana, certifico que el 10 de Marzo de este presente ano (en vertud del decreto) que acompana del Sor T'e de Gob'ry subddelegado de R'l Hacienda D'n Carlos Dehault Delassus en fecha de 16 de Fbre del ano 1799, me he transferido a la tierra de D'n Pedro Chouteau, para pravicar el apeo arreglado a su pedimiento de 133 arp's planos, cuyas medidas se han tomado en presencia del proprietario y de los vecinos liaderos con la percha de Paris de 18 pies de largo segun constumbre adoptada on esta Prova de la Louisiana y sin tocar a lo que puede dardesi la variacion de la Aguja que es de 7 q's y 30 m's E. como consta del plano figurativo. Que antecede cuya tierra de halla situada como a 12 arp's al N. de esta villa de St. Luis, lindando al N. con tierra de Don Luis Labeaume, al S. en partiola con otra tierra de Antoino Roy, y de Jacinto Hortiz, al E. con la orilla del Rio Mississippi y al O. con las tierras valdias del Dom'o R'l. Y para que conste donde combenga le Joy el present con el plano figuarativo

que precede a elqual se indican las dimenciones y limites naturales y artificiales que rodean d'ha tierra.

En St. Luis de Illinois a 17 de Junio, de 1803.

(Signed) ANTINO SOULARD, *Ag'r Par'r.*

RECORDER'S OFFICE, *St. Louis*, 17 *April*, 1851.

I certify that the foregoing plat and certificate of survey are correctly transcribed from page 379, of Book C, in this office.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Translation of the foregoing certificate of survey.

NOTE.—The four corners, and the bounds on the lines, are stones rammed in with the dross of iron. They are shown on the plat; registered in book B, of the surveys of said post, (St. Louis,) folio 6, No. 6.

I, Antonio Soulard, surveyor particular of Upper Louisiana, do certify, that on the 10th of March, of the present year, (in virtue of the decree hereto annexed of the lieutenant governor, and sub-delegate of the
356 royal Fisc Don Charles Dehault, dated the 16th October, 1799,) I went to the land of Mr. Pierre Chouteau, for the purpose of surveying the same, agreeable to his demand for 133 superficial arpents; which survey was executed in the presence of the owner, and of his adjoining neighbors, with the perch of the city of Paris of 18 feet in length, in accordance with the custom of surveying lands in this province of Louisiana, and without regard to the variation of the needle, which is 7° 30′ east, as appears from the above plat. This land is situated at about 12 arpents north of this town of St. Louis, bounded north by the land of Louis Labeaume; south, in part by another tract owned by Antoine Roy, and in part by that of Hyacinthe Egliz; east by the bank of the Mississippi; and west by the vacant lands of the domain. And in order to render the whole available, whenever needed, I give the present certificate, with the foregoing figurative plat, on which are shown the dimensions of the said land, and the limits, both natural and artificial, that surround it.

St. Louis, of Illinois, 17th June, 1803.

ANTOINE SOULARD,
Part'r Surveyor.

ST. LOUIS, 17*th April*, 1851.

I have correctly translated the foregoing.

ADOLPHUS RENARD.

Fee $1,65. A. R.

We agree that the foregoing are true translations of the documents aforementioned, contained in the record of the cause of John Magwire vs. Mary L. Tyler and others, now on the file in the office of the clerk of the Supreme Court of the United States, at Washington City, October 26th, 1867.

S. T. GLOVER,
For Magwire.
BRITTON A. HILL,
Att'y and of Counsel for Def't in Error.

357 And afterwards, to wit, at the October term 1869, of the supreme court of the State of Missouri, the following proceedings were had in said cause, to wit:

Mandate from Supreme Court of the U. S.; and motion to affirm decrees of the St. Louis court of common plees, filed.

MONDAY, *November* 29, 1869.

JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER ET AL., APPELLANTS.

Now at this day comes the respondent by his attorney herein, and files a mandate from the Supreme Court of the United States, and moves this court to enter a judgment herein affirming the decree of the St. Louis court of common pleas in this cause. The court not having fully considered said motion the cause is held under advisement;
358 and this cause is continued until the March term, 1870, of this court.

And afterwards, to wit, at the March term, 1870, of said court the following further proceedings were had in said cause, to wit:

Argument progressed.

FRIDAY, *April* 1, 1870.

JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER ET AL., APPELLANTS.

Now again come the parties by their attorneys, whereupon the argument in this cause progresses, but not being concluded is laid over till Monday, the 4th inst.

And afterwards, to wit, at the same term of said court the following further proceedings were had in said cause to wit:

Argument progressed.

MONDAY, *April* 4, 1870.

359 JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER ET AL., APPELLANTS.

Now again come the parties by their attorneys, whereupon the argument in this cause progressed, but not being concluded is laid over until tomorrow, Tuesday, April 5th, 1870.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Arg'm't progressed and finished.

TUESDAY, *April* 5th, 1870.

JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER ET AL., APPELLANTS.

Now again come the parties by their attorneys, whereupon the argu-

ment herein progressed, and being concluded the cause is submitted to the court—statement and brief of appellants filed.

And afterwards at the same term of said court, the following
360 further proceedings were had in said cause, to wit:

Cause held under advisement.

SATURDAY, *May* 14, 1870.

* * * *vs.* * * *
* * * *vs.* * * *
* * * *vs.* * * *
JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER ET AL., APPELLANTS.
* * * *vs.* * * *
* * * *vs.* * * *
* * * *vs.* * * *
* * * *vs.* * * *
* * * *vs.* * * *

These causes having been submitted but not decided at this term, the same are held under advisement until the next term of this court.

And afterwards, to wit, at the October term, 1870, of said court, the following further proceedings were had in said cause, to wit:

Judgment of sup. court of Mo. heretofore rendered, reversed, and pl'tf's petition dismissed.

361 MONDAY, *November* 14, 1870.

JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER, WILLIAM C. TYLER, ELIZA Tyler, Fannie Tyler, Roberta Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Marshall Brotherton, John R. Shepley, Edward D. Hobbs, Alfred Dryden and Margaret Dryden, his wife, Elizabeth Gordon, Menerva Gordon, Mary Gordon, Franklin A. Dick, Louisa R. Brown, James B. Brown, Laura H. Brown, Mary A. Lakenan, James R. Lackland, Harvey S. Parker, James Parker, William E. Shepherd, Catherine Shaffey, Barnett Orrick, John Russell, Mary Rice, Nellie Delaney, Rebecca Dodd, Joseph Dennis, Frederick Schulenberg, and Adolph Bœckler, appellants.

Motion to affirm decree of the St. Louis court of common pleas.

This cause came on to be heard on a mandate therein of the Supreme Court of the United States, as well as on the pleadings and
362 proofs of record in this cause in this court; and the same having been argued by counsel and considered by the court, it is thereupon adjudged and decreed as follows, viz:

First. In conformity to the said mandate, the judgment and decree of this court therein mentioned is hereby reversed; and thereupon this cause remains to be proceeded with in conformity with the opinion of

the Supreme Court of the United States and the laws of the State of Missouri.

Second. This court doth find, adjudge, and decree that, under and in conformity with the laws of the State of Missouri, the said petition of the said Magwire is a proceeding to obtain equitable relief only in respect to the lands in the said petition mentioned; and that no right or title to any equitable relief touching the said lands, or any part thereof, is shown by the said petition, and the proofs adduced in support thereof.

Third. This court doth find, adjudge, and decree that, in conformity with the laws of the State of Missouri, the legal title to the said
363 lands cannot be tried, adjudged, or determined under the said petition, and the proceedings thereunder; there being a plain, adequate, and complete remedy, by an action of ejectment, in conformity with the laws of the State of Missouri, in that behalf, and no relief in the proceedings in equity pending before this court.

Fourth. This court doth find, adjudge, and decree that, in conformity with the laws of the State of Missouri, the petition of the said Magwire is a proceeding for equitable relief only for the purpose of vesting the legal title by decree in said Magwire to the lands therein mentioned, the legal title to which was admitted by the plaintiff in his petition to be held by defendants; and the only judgment that, under the laws of the State of Missouri, can be entered therein, if supported by the proofs in the cause, would be a decree vesting the title to the said lands in said Magwire; and, under said laws, the right to recover in that suit the possession of the lands therein described could not be tried,
364 adjudged, or determined under the said petition, and the proceedings thereunder.

Fifth. This court doth find, adjudge, and decree that, in conformity with the laws of the State of Missouri, the petition of the said Magwire is a proceeding for equitable relief only for the purpose of vesting the legal title to the lands therein described, the legal title to which was admitted by plaintiff in his petition to be then in said defendants, in said plaintiff, Magwire; and, in conformity with said laws, the right to recover in the said suit the rents, issues and profits of said lands, cannot be tried, adjudged, or determined under the said petition, and the proceedings thereunder.

Sixth. It is therefore considered by the court, and the court doth order, adjudge, and decree that the said petition be dismissed with costs.

Opinion filed—

365 And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Writ of error to sup. court of Missouri.

THURSDAY, *November* 17, 1870.

JOHN MAGWIRE, RESPONDENT,
vs.
MARY L. TYLER ET AL., APPELLANTS.

Now comes the respondent herein, by his attorney, and files a writ of error from the supreme court of the United States in this cause, which is allowed.

Citation filed.

Bond filed and approved.

Bond.

Know all men by these presents that we, John Magwire, as
366 principal, and Lewis V. Bogy and Oliver D. Filley, are held and firmly bound unto Mary L. Tyler, William C. Tyler, Eliza Tyler, Fannie Tyler, Roberta Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Edward D. Hobbs, Marshall Brotherton, John R. Shepley, Alfred Dryden and Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Franklin A. Dick, Louisa R. Brown, Laura H. Brown, Mary A. Lakenan, James B. Lackland, Henry S. Parker, James Parker, William E. Shepherd, Catherine E. Schaffey, Barnett Orrick, John Russell, Mary Vice, Nelly Delaney, Rebecca Dodd, Joseph Dennis, Frederick Schulenberg, and Adolph Bœckler, James B. Brown, and Robert B. Brown, in the full and just sum of one thousand dollars, to be paid to the said Mary L. Tyler and other obligees above named, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and
367 administrators, jointly and severally, by these presents, sealed with our seals, and dated this seventeenth day of November, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately, at the October term, 1870, of the supreme court of the State of Missouri, in a suit depending in said court between John Magwire, plaintiff, and Mary L. Tyler et al., defendants, judgment was rendered against the said plaintiff, John Magwire, and the said plaintiff, John Magwire, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants, Mary L. Tyler et al., citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said
368 plaintiff, John Magwire, shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JNO. MAGWIRE. [SEAL.]
O. D. FILLEY. [SEAL.]
LEWIS V. BOGY. [SEAL.]

Sealed in the presence of—

Approved by—

DAVID WAGNER,
Presiding Judge Sup. C't Mo.

Endorsed: John Magwire vs. Mary L. Tyler et al. Bond. Filed November 17, 1870. O. T. Fishback, clerk, per J. F. Baier, D. C.

369 STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the supreme court held at St. Louis, of the State of Missouri, certify that the foregoing three hundred fifty-six pages of printing and twelve pages of writing contain a full, true, and complete copy of the record and proceedings in the above-entitled cause, as fully as the remains of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said

court, at office in the city of St. Louis, this twenty-second day of November, A. D. 1870.

[SEAL.] O. T. FISHBACK, *Clerk*,
Per J. F. BAIER, *D. C.*

This record, $354\frac{00}{100}$, to be paid by P. E.

370 JOHN MAGWIRE
vs.
MARY L. TYLER ET AL.

To the Hon. Samuel F. Miller, associate justice of the Supreme Court of the U. S.:

The petition of the above-named plaintiff in error repectfully sheweth: That upon the mandate of the Supreme Court of the United States, issued on the twenty-sixth day of November, 1869, reversing the decision of the supreme court of the State of Missouri, the above-entitled
371 cause was remanded to the said supreme court of the State of Missouri, with instructions to carry into effect the decision of the Supreme Court of the United States in the premises, as will more fully appear on inspection of the opinion and mandate of the said Supreme Court of the United States now before your honor. That the said supreme court of the State of Missouri, in obedience to the said mandate, received and took jurisdiction of the said cause so remanded to it, but refused to proceed thereon as directed by the said mandate; but, to the contrary thereof, so proceeded therein as to reverse, vacate,
372 and hold to be of non-effect, the decree and mandate of the Supreme Court of the United States in the premises, and thereby deemed and rejected and decreed to be of non-effect the right and title which had been set up by your petitioner in the said cause, under the Constitution and laws of the United States, and which right and title had been in the same cause solemnly and finally adjudicated by the Supreme Court of the United States to be valid; and refused to carry into effect the mandate of the said Supreme Court of the U. S. in the premises. All which more fully and at large appears by the record of the
373 said Supreme Court of the U. S., and the transcript of the record of the said supreme court of the State of Missouri, now exhibited to your honor.

Wherefore your petitioner prays your honor now to allow and order the U. S. writ of error under the 25th section of the act of Congress commonly known as the judiciary act of 1789, to the end that the errors of the said supreme court of Missouri in the premises may be corrected, and right and justice done according to law.

THOMAS EWING & J. M. CARLISLE,
Atty's & of Counsel for Pl'ff.

WASHINGTON, *Jan'y* 9, 1871.

Let the writ of error issue as prayed.

SAM. F. MILLER,
Asso. Ju. Sup. Court U. S.

To the CLERK of the Sup. Court U. S.

374 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the

judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Mary L. Tyler, William C. Tyler, Eliza Tyler, Fannie Tyler, Roberta Tyler, Alice Tyler, Emma Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Marshall Brotherton, John R. Shepley, Edward D. Hobbs, Alfred Dryden and Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Franklin A. Dick, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary A. Lakeman, James R. Lackland, Henry S. Parker, James Parker, William E. Shepherd, Chatherine Shaffey, Barnitt Orrick, John Russell, Mary Vice, Nellie Delaney, Rebecca Dodd, Joseph Dennis, Frederick Schulenberg, and Adolph Boeckler, appellants, and John Magwire, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the grounds of their being repugnant to the Constitution, treaties, or laws of the United States, and the decis-
375 ion was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, especially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said John Magwire, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy.

Issued 16th February, 1871.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

SAM. F. MILLER,
Asso. Jus. Sup. C. U. S.

376 The United States of America to Mary L. Tyler, William C. Tyler, Eliza Tyler, Fannie Tyler, Roberta Tyler, Alice Tyler, Emma Tyler, James Guthrie, William Chambers, Isaac H. Sturgeon, Thomas L. Sturgeon, Harriet M. Dean, William L. Ewing, Benjamin F. Jennings, Joseph Cochran, Joseph Templeton, Fidelio C. Sharp, Edward D. Hobbs, Marshall Brotherton, John R. Shepley, Alfred Dryden and Margaret Dryden, his wife, Elizabeth Gordon, Minerva Gordon, Mary Gordon, Franklin A. Dick, Louisa R. Brown, James

B. Brown, Robert B. Brown, Laura H. Brown, Mary A. Lakeman, Jas. R. Lackland, Henry S. Parker, James Parker, William E. Shepherd, Catharine Shaffey, Barnitt Orrick, John Russell, Mary Vice, Nellie Delaney, Rebecca Dodd, Joseph Dennis, Frederick Schulenberg, and Adolph Bœckler, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein John Magwire is plaintiff in error, and you are defendant in error, to show cause, if any there be, why decree rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this seventeenth day of February, in the year of our Lord one thousand eight hundred and seventy-one.

SAM. F. MILLER,
Asso. Justice Sup. C't U. S.

377 On this twenty-second day of February, in the year of our Lord one thousand eight hundred and seventy-one, personally appeared before me Eli R. Phillips, a deputy U. S. marshal for the eastern district of Missouri, and makes oath that he delivered a true copy of the within citation to Briton A. Hill, attorney of record for the within named defendants, and to whom the within citation is addressed.

ELI R. PHILLIPS.

Sworn to and subscribed the twenty-fourth day of February, A. D. 1871, before me. Witness my hand and notarial seal.

[SEAL.] EDWARD P. JOHNSON,
Notary Public, St. Louis County, Missouri.

378 Know all men by these presents, that I, Thomas Ewing, junior, am held and firmly bound unto Mary L. Tyler, W. C. Tyler, E. Tyler, F. Tyler, R. Tyler, Alice Tyler, Emma Tyler, J. Guthrie, W. Chambers, I. H. Sturgeon, T. L. Sturgeon, H. M. Dean, W. L. Ewing, B. F. Jennings, J. Cochran, J. Templeton, F. C. Sharp, M. Brotherton, J. R. Shepley, E. D. Hobbs, A. Dryden and M. Dryden, his wife, E. Gordon, M. Gordon, Mary Gordon, F. A. Dick, L. R. Brown, J. B. Brown, R. B. Brown, L. H. Brown, M. A. Lakeman, J. R. Lackland, H. S. Parker, J. Parker, W. E. Shepherd, C. Shaffey, B. Orrick, J. Russell, M. Vice, N. Delaney, Rebecca Dodd, J. Dennis, F. Schulenberg, and A. Boeckler in the full and just sum of one thousand dollars, to be paid to the said Mary L. Tyler, W. C. Tyler, E. Tyler, F. Tyler, R. Tyler, Alice Tyler, Emma Tyler, J. Guthrie, W. Chambers, I. H. Sturgeon, T. L. Sturgeon, H. M. Dean, W. L. Ewing, B. F. Jennings, J. Cochran, J. Templeton, F. C. Sharp, M. Brotherton, J. R. Shepley, E. D. Hobbs, A. Dryden and M. Dryden, his wife, E. Gordon, Mary Gordon, F. A. Dick, L. R. Brown, J. B. Brown, R. B. Brown, L. H. Brown, M. A. Lakeman, J. R. Lackland, H. S. Parker, J. Parker, W. E. Shepherd, C. Shaffey, B. Orrick, J. Russell, M. Vice, N. Delaney, Rebecca Dodd, J. Dennis, F. Schulenberg, and A. Boeckler, certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this day of in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately, at a supreme court of the State of Missouri in a suit depending in said court, between the above-named obligees and John Magwire, decree was rendered against the said John Magwire, and the said John Magwire having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said Mary L. Tyler, W. C. Tyler, E. Tyler, F. Tyler, R. Tyler, Alice Tyler, Emma Tyler, J. Guthrie, W. Chambers, I. H. Sturgeon, T. L. Sturgeon, H. M. Dean, W. L. Ewing, B. F. Jennings, J. Cochran, J. Templeton, F. C. Sharp, M. Brotherton, J. R. Shepley, E. D. Hobbs, A. Dryden & M. Dryden, his wife, E. Gordon, M. Gordon, Mary Gordon, F. A. Dick, L. R. Brown, J. B. Brown, R. B. Brown, L. H. Brown, M. A. Lakeman, J. R. Lackland, H. S. Parker, J. Parker, W. E. Shepherd, C. Shaffey, B. Orrick, J. Russell, M. Vice, N. Delaney, Rebecca Dodd, J. Dennis, F. Schulenberg, & A. Boeckler, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said John Magwire shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(S'g'd) T. EWING. [L. S.]

Sealed and delivered in presence of—
(S'g'd) JA'S H. MCKENNEY.

Approved by—
(Sig'd) SAM. F. MILLER,
Judge.

379 JOHN MAGWIRE, PLAINTIFF IN ERROR,
vs.
MARY L. TYLER ET AL., DEFT'S IN ERROR.

DISTRICTS OF MISSOURI, *ss:*

Robert M. Renick, being duly sworn, upon his oath states that he is acquainted with the real estate & premises described in the record in the above-entitled cause, & that the said real estate & premises are worth the sum of twenty-five thousand dollars & upwards.

ROB'T M. RENICK.

Subscribed & sworn to before me at said districts, on this 22d day of November, A. D. 1870.

BEN. F. HICKMAN,
Clerk U. S. Circuit Court, Mo. Dis.

(Indorsement on cover:) No. 518. John Magwire, pl'ff in error, vs. Mary L. Tyler et al. Missouri sup. court. Filed 4th March, 1871.

40. Missouri - 439 -

1. Wheaton

8 Peters 322

12. Peters. Stockton v Lucas

469-47

Supreme Court of the United States.

DECEMBER TERM, 1871.

JOHN MAGWIRE, Plaintiff in Error,

vs.

MARY L. TYLER AND OTHERS, Defendants.

S. T. GLOVER AND J. M. CARLISLE FOR PLAINTIFF IN ERROR.

Judd & Detweiler, Printers and Publishers, Washington, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1871.

JOHN MAGWIRE, Plaintiff in Error,

vs.

MARY L. TYLER AND OTHERS, Defendants.

THERE ARE SPECIAL REASONS FOR ADVANCING THIS CAUSE UPON THE DOCKET.

There has been a denial of justice. The case was heard here in April, 1869, and every question in the record was decided against the defendants, and this court made an order requiring the supreme court of Missouri to affirm the judgment of the court of common pleas of St. Louis county, Missouri, in which court the cause was first heard.

Inasmuch as this direction to affirm was deemed unusual and not so respectful to the supreme court of Missouri as a simple mandate to conform their opinion to the rulings here, the order was modified accordingly.

The members of this court, then, on the bench, will remember that the counsel for the plaintiff resisted the motion to modify, upon the ground the opinions of this court would be dissented from by the supreme court of Missouri would not be obeyed. The fact has now transpired.

The supreme court of Missouri was asked to carry out the rulings of this Supreme Court November 29, 1869, when they continued the motion. In April, 1870, it was taken up, argued, and the supreme court of Missouri again continued the cause under advisement till November, 1870, when it was

decided, and the plaintiff's suit dismissed, as it is claimed, on the other side, on the ground that the suit was in equity, and the plaintiff had a legal title, and a remedy at law. The fact is, that there was no such question in the record.

It is due to the plaintiff that, since his cause was fully and completely decided nearly three years ago, he should be no longer delayed in his execution. The refusal to obey the mandate of this court and the denial of justice, which is palpable in the record, constitutes the special ground for advancing the cause upon the docket. It ought to be understood that, when an appellate court has its mandate disregarded and its authority trifled with, a prompt redress should be afforded. No inducement should be offered to an inferior court, or any party, to look for indulgence in such a case. The plaintiff, in asking to advance this cause, is simply asking that measure of justice which was declared to be his right three years ago.

This cause ought to be regarded as having precedence over all cases on the docket. It is older than any of the them. It is an adjudged case. The plaintiff is not asking simply for a hearing, but for a judgment upon a hearing which has determined his title to relief. There is another reason why this motion should be granted.

The plaintiff's title accrued May 26, 1862; he commenced his suit September 18, 1862. The statute of limitations, which has been running upon his cause of action, if he shall now be compelled to bring ejectments, will expire May 25, 1872, which day will pass before the next term of this court. He hopes, therefore, that such reasons, in addition to the fact that the mandate of the court has been disobeyed, may induce the court to hear the cause promptly.

STATEMENT OF THE CASE BY S. T. GLOVER AND J. M. CARLISLE FOR MAGWIRE.

September 18, 1862, Magwire filed his petition in the land court of St. Louis county, Missouri, against the defendants, forty-four in number, stating that June 1, 1794, Joseph Brazeau had a grant of 4x20 arpents of land along the bank of the Mississippi river, near the village of St. Louis. May 9, 1798, said Brazeau sold and conveyed 4x16 arpents, being the northern part of the tract, to Louis Labaume, reserving the 4x4 arpents at the southern end for himself. That the plaintiff, by a chain of conveyances, became the owner of said 4x4 arpents, which tract is the subject of this suit. That Labaume, after purchasing the said 4x16 arpents, February 15, 1799, procured an extension of his limits west to the aggregate quantity of 360 arpents, and the same was surveyed to him April 10, 1799.

That this survey was made *contrary to the terms of the grant to Labaume*, and so that, *by mistake or design*, Labaume included in the survey of his enlarged grant the Brazeau tract, which he did not own. That on the 22d September, 1810, the board of commissioners for the adjustment of land titles in Missouri confirmed to Joseph Brazeau his 4x4 arpents, and to Labaume his land. That afterwards, and notwithstanding the said 4x4 arpents justly and honestly belonged to the plaintiff, the defendants and others, in combination and confederacy, procured a survey to be made under the authority of the United States in such manner as to include the whole Brazeau tract in the claim of Labaume, and procured under like authority a patent to be issued granting the land covered by said survey to the legal representatives of said Labaume. *That the said survey and patent of the Labaume confirmation were issued and procured by said defendants by fraud, covin, and misrepresentation.* That May 26, 1862, the Brazeau confirmation of 4x4 arpents was surveyed inside the exterior limits of the survey and patent of Labaume, and June 10, 1862, a patent

was issued to Joseph Brazeau, or his legal representatives therefor. That each of the defendants claims an interest in said Brazeau tract, and is in possession thereof, and has received the rents and profits of the same; that every one of them had notice of the rights of plaintiff under Brazeau, and that all the defendants had confederated and combined to keep the plaintiff out of possession of the lands claimed and the rents and profits; that the patent and survey to Labaume's representatives were older than the patent and survey to Brazeau's representatives; that defendants continually assert the validity of the Labaume title and the invalidity of the Brazeau title, and that the said patent and survey for Labaume's representatives, so procured by fraud, covin, and misrepresentation, conflict with the patent and survey for Brazeau's representatives, and constitute a cloud upon the plaintiff's title.

The prayer of the plaintiff's petition was:

1. That the court will divest out of the defendants all right, title, and interest acquired *or claimed by them and each of them under Labaume.*

2. That the court will vest the same in the plaintiff.

3. That the court will put the plaintiff in possession.

4. That an account be taken of the rents and profits of the land, and plaintiff have judgment therefor.

5. The plaintiff prayed for such other relief as might be proper.

See petition record, pp. 3 to 7 inclusive.

The patent to Labaume's representatives granted all the land in its exterior limits, "*saving and reserving any valid adverse right that might exist to any part thereof.*"

See patent, record pp. 59 to 62 inclusive.

The patent to Brazeau's representatives granted all the

land included in its exterior limits, "*saving and reserving any valid adverse right which might exist to any part thereof.*"

See patent, record pp. 46 to 50 inclusive.

So that either patent, standing alone, was a *prima facie* title in fee simple; and Labaume's was prior in time with all legal presumptions in its favor.

The defendants answered on the merits of the case to the following effect:

1. That the 4 x 4 arpents confirmed to Brazeau were not properly located by the United States survey thereof inside of Labaume's survey.

2. That the confirmation to Brazeau was void.

3. That the survey for Brazeau's representatives was void for want of legal authority in the officers to make it.

4. That the patent to Brazeau's representatives was void for the same reason.

5. That the plaintiff, claiming under the confirmation and survey for Brazeau's representatives, was estopped to locate the land inside the Labaume patent, by *matter in pais*, long before their date.

6. That the survey and patent for Labaume's representatives vested a title in them in fee simple.

7. That the defendants had no notice of Brazeau's claim, and were innocent purchasers of the Labaume title.

8. That the plaintiff, claiming under Brazeau, was barred by the statute of limitations.

9. Defendants denied that any part of the 4 x 4 of Brazeau was inside the Labaume patent.

10. They denied that the patent or survey for Labaume's representatives was procured by fraud, covin, or misrepresentation.

11. They denied that the plaintiff had the Brazeau title to the 4 x 4.

12. They set forth a former suit and judgment against the plaintiff prior in date to the plaintiff's survey and patent, in bar of this suit.

13. And defendants denied every averment in the plaintiff's petition in conflict with any part of their answer.

And, "*so having fully answered the defendants, asked for judgment and their costs.*"

See answer, Record, pp. 9 to 22, inclusive.

October 15, 1862, the venne was changed to the Common Pleas.

Record, pp. 22, 23.

The cause was prepared by the parties for trial, and by them solemnly submitted to the court for judgment upon the merits.

See Record, p. 25, which says:

"Now, at this day, May 31, 1864, comes the plaintiff, by his solicitors, and also the defendants: the adult defendants, by their solicitors; the infant defendants, by their guardians, *and this cause having been heretofore submitted to the court for a decision on the plaintiff's petition, and the answers of all the defendants and the exhibits and other evidence in the cause,*" *&c.*

The defendants having thus broadly submitted themselves *and their cause to the court*, a decree was made in favor of plaintiff, in conformity to the prayer of his petition, as respects the land, and a reference directed to ascertain the value of the rents and profits.

On the hearing of the cause, the evidence was very voluminous.

See bill of exceptions, Record, pp. 26 to 277, inclusive.

The court found that the survey for Labaume, in 1799, was made to include the Brazeau's land by mistake or design; that the plaintiff's land was situated inside of the Labaume

survey and patent; and that said Labaume survey and patent were issued and procured by fraud, covin, and misrepresentation, and in combination and confederacy by defendants to keep the plaintiff out of possession of his property, and the rents and profits thereof.

See record, p. 25.

Where "the court finds *all the issues* in the cause for the plaintiff."

The court then entered a decree extinguishing the claims of the defendants in these words: "The 4x4 arpents is hereby decreed to the plaintiff, and all the right, title, and interest of each and every one of said defendants in and to said tract of land is hereby divested out of said defendants, and each of them, and is vested in and passed to plaintiff, to have and to hold to said plaintiff, his heirs and assigns;" and "it is ordered, adjudged, and decreed that plaintiff do have and recover of defendants respectively the rents and profits accrued during the respective possessions, and forasmuch as the court is not advised what is the amount and other particulars thereof, Alexander Martin is appointed commissioner to take an account," &c.

See decree, record, pp. 25 and 26.

As soon as this finding and decree was made, defendants moved for a new trial. (Record, p. 26.) The motion set forth the following grounds for new trial, and no others:

(1.) Because the court erred in excluding proper and legal testimony and evidence offered on the part of defendants.

(2.) Because the court admitted illegal and improper testimony and evidence offered on the part of the plaintiff.

(3.) Because the judgment and decision of the court is against *law* and *equity* and against evidence and the weight of evidence.

(4.) Because the judgment and decision of the court should have been for the defendants instead of the plaintiff.

(5.) Because on the evidence, testimony, and equities in the case, the plaintiff's bill should have been dismissed.

Record p. 277.

On the 8th June, 1864, defendants filed additional reasons for new trial, in the following words and no other: "Because the evidence and testimony in this cause fully and conclusively sustained all and every one of the demands, averments, and allegations contained in the answer of defendants, and fully controverted and disproved each and every allegation and averment in plaintiff's petition; and, *therefore*, the decree and judgment should have been that plaintiff's petition be dismissed.

"And because it was error to hold that the secretary, Caleb B. Smith, had any power to reverse the decision of Secretary Stewart upon the same question and title and confirmation, after the lapse of eleven years from said final decision of Secretary Stewart.

"And because it was error to hold that the Commissioner of the General Land Office had any power to withdraw the patent of 1852 to Brazeau after it had been used in courts of justice, and titles had been determined thereunder.

"And because it was error for the court to hold that under the act of Congress 3d March, 1807, there could be two patents and two surveys for two different tracts of land under the same confirmation to Joseph Brazeau."

Record, pp. 277, 278.

The record comprises among other matter, the following, as part of the defendants' bill of exceptions: "The foregoing was all the evidence and testimony and proceedings in this cause on the trial thereof before the court, and all and every and each of said deeds, documents, papers, plats and depositions, testimony, evidence, records, patents, and all other instruments of writing set forth and copied in the foregoing

bill of exceptions, was duly read in evidence on the trial of this cause.

And the said cause was thereupon, upon all said proofs aforesaid, submitted to the court for decision and decree, *the defendants insisting upon all the points made in their answer*, and the court thereupon decreed in favor of the plaintiff.

On the 21st February, 1865, the court made a final decree, awarding to the plaintiff the possession of the land sued for against each defendant, and also rents and profits.

See record, pp. 278 to 287, inclusive.

The defendants made another motion for new trial as soon as the final decree was entered, assigning the following and no other reasons:

(1.) Because the court erred in excluding proper and legal testimony and evidence offered on the part of defendants.

(2.) Because the court admitted illegal and improper testimony offered on the part of the plaintiff.

(3.) Because the judgment and decision of the court is against *law* and equity and against evidence and the weight of evidence.

(4.) Because the judgment should have been for defendants instead of the plaintiff.

(5.) Because upon evidence, testimony, and equities in the case the plaintiff's bill should have been dismissed.

(6.) Because the evidence and testimony in the case fully and conclusively sustains all and every the denials, averments, and allegations contained in the defendants' answer, and fully controverted and disproved all and every allegation and averment in the plaintiff's petition, and *therefore* the judgment should have been that the plaintiff's petition should have been dismissed.

(7.) Because it was error to hold that the Secretary of the Interior, Caleb B. Smith, had any power to reverse the decision of Secretary Stewart.

(8.) Because it was error to hold that the Commissioner of the General Land Office had any power to withdraw the patent to Brazeau after it had been used in courts of justice and titles had been determined thereunder.

(9.) Because it was error for the court to hold that under the act of Congress of 3d March, 1807, there could be two patents and two surveys for the two different tracts of land under the same confirmation to Joseph Brazeau.

Record, pp. 286, 287.

All the motions for new trial were overruled, and the defendants appealed to the supreme court of Missouri.

April 15, 1867, the appeal was decided in the supreme court of Missouri, and by that court the judgment of the court of common pleas was reversed, and the plaintiff's petition dismissed.

Magwire removed the record, by writ of error, into the Supreme Court of the United States, and the cause was disposed of here at the December term, 1869.

The opinions of this court delivered on said writ of error settled conclusively, in favor of Magwire, all the questions raised by the record in the cause.

See 8 Wallace, 650, *Magwire vs. Tyler.*

The decree of the supreme court of Missouri was reversed and a mandate issued to the supreme court of Missouri to proceed in conformity with the opinion of this court.

On the 29th day of November, 1869, the plaintiff filed in the supreme court of Missouri the mandate of this court, and moved said court to affirm the judgment of the court of common pleas, which motion was held under advisement till November 14, 1870, when the said supreme court of Missouri made an order reversing the judgment by which the judgment of the common pleas was reversed in April, 1867, and plaintiff's petition dismissed, but immediately made another order dismissing the petition of the plaintiff.

The following is a copy of this last order of the supreme court of Missouri:

"This cause came on to be heard on a mandate therein of the Supreme Court of the United States as well as on the pleadings and proofs of record in this cause in this court, and the same having been argued by counsel and considered by the court, it is therefore adjudged and decreed as follows, to wit:

1. "In conformity to the said mandate the judgment and decree of this court therein mentioned is hereby reversed; and thereupon this cause remains to be proceeded with in conformity to the opinion of the Supreme Court of the United States *and the laws of the State of Missouri.*

2. "This court doth find and adjudge and decree that under and in conformity with the laws of the State of Missouri the said petition of the said Magwire is a proceeding to obtain equitable relief only in respect to the lands in said petition mentioned, and that no right or title to any equitable relief touching the said lands, or any part thereof, is shown by the said petition and the proofs adduced in support thereof.

3. "The court doth find, adjudge and decree, that in conformity with the laws of the State of Missouri the legal title to said land cannot be tried and adjudged or determined under said petition and the proceedings thereunder, there being a plain, adequate, and complete remedy by an action of ejectment in conformity with the laws of the State of Missouri in that behalf, and no relief in the proceedings in equity pending before this court.

4. "The court doth find, adjudge, and decree that in conformity with the laws of the State of Missouri, the petition of said Magwire is a proceeding for equitable relief only for the purpose of vesting the legal title by decree in said Magwire, to the lands therein mentioned. The legal title to which was admitted by plaintiff in his petition to be held by defendants, and the only judgment that under the laws of the State of Missouri, can be entered therein if supported by the proofs in the cause, would be a decree vesting the title to said lands in said Magwire; and under said laws the right to recover in that suit, the possession of the lands therein described, could not be tried, adjudged, or determined, under the said petition and the proceedings thereunder.

5. "This court doth find, adjudge, and decree, that in conformity with the laws of the State of Missouri, the peti-

tion of said Magwire is a proceeding for equitable relief only for the purpose of vesting the legal title to the lands therein described, (the legal title to which was admitted by plaintiff in his petition to be then in defendant,) in said plaintiff, Magwire, and in conformity with said laws the right to recover in said suit the rents, issues, and profits of said lands, cannot be tried, adjudged, or determined, under the said petition and the proceedings thereunder.

6. "It is, *therefore*, considered by the court, and the court doth order, adjudge, and decree, that the said petition be dismissed with costs.

Record, pp. 308, 309.

It is this judgment of the supreme court of Misssouri that is now complained of.

We say that in making said judgment, the court refused to follow the opinion and mandate of this court.

POINTS AND AUTHORITIES FOR MAGWIRE, THE PLAINTIFF IN ERROR, BY S. T. GLOVER AND J. M. CARLISLE.

(1.) The plaintiff, by this writ of error, complains that the supreme court of Missouri refused to conform its action to the opinion of this court, and disobeyed or evaded its mandate; that this result was accomplished in part by raising and deciding a pretended question of State law, not raised by the pleadings and not in the record, and in part by denying or ignoring questions which were in the record.

It is not claimed that this court has jurisdiction, in a case coming from the highest court of a State, of other questions other than those named in the act of Congress. But it is claimed that when this court has jurisdiction of all the questions in the record, and has decided them, its mandate shall not be evaded.

(2.) It is admitted that the defendants in their answer mentioned as defences estoppal *in pais*, innocent purchase, for-

mer recovery, statute of limitations, and boundary, all proper subjects of adjudication by State courts in a case where such defences could exist without nullifying the laws of the United States. But in this case every one of these defences was impossible after the rulings of this court upon the questions within its jurisdiction. In deciding the questions in the record, and which were properly adjudged here, all these defences were swept away. Thus, when this court decided that Magwire's title did not begin to exist till the date of his patent, June 10, 1862, there could be no limitation, for his suit was brought in September, 1862. All other pretended questions of State law mentioned by the pleadings are destroyed as effectually by other rulings of this court. But it has been said that though the jurisdiction of this court is absolute and final over the question of when title was vested under the laws of the United States, the State court has a jurisdiction quite as absolute and final as to when the statute of limitations began to run; and no matter what the State court may rule as to the statute of limitations it is conclusive. That is to say, a State court may, in all cases, overturn a decision of this court by calling the question one of State law. If this be so, there is really no power, no jurisdiction in this court over cases coming from the highest court of any State.

The supreme court of Missouri could have decided in this case that by the laws of Missouri John Magwire was bound to prove he was not an alien enemy, and dismissed his petition for want of that proof; or that by the laws of Missouri he was bound to prove he had paid the purchase-money mentioned in his conveyance, or his last years' taxes, and dismissed his petition for want of that proof; and all this without any reference to the pleadings or the state of the law in fact. This cannot be so.

(3.) Of necessity the Supreme Court of the United States having power to decide all questions arising under laws and authorities of the United States, and if it believes the decision of such questions determines the whole cause, then to enter a final judgment, it must have power to prevent any

evasion of its judgment; it must decide for itself what questions are in a cause, what is proper for its own decision when its own decision is final, or whether the record contains questions proper for the adjudication of a State court.

In doing this the Supreme Court is not left to the arbitrary action of the State court. But if this court is not left to the arbitrary action of the State court, it must protect itself by looking into the record to see whether questions of State law are really there, or whether its judgment has been evaded. As a court of last resort, it must decide for itself as to its own jurisdiction.

1 Wheat., 304, *Martin* vs. *Hunters' lessee.*
11 Wallace, 37, *Parmelee* vs. *Lawrence.*
4 Wallace, 180, ***RR.*** *Co.* vs. *Rock.*

It is believed that this court has always adhered to the doctrine that in deciding whether it has or not jurisdiction the record itself must be consulted, and no opinion of a State court and no certificate of a State judge has been permitted either to add to or detract from the legal effect of the record.

This is the only sound and safe construction. If this court is asked to assume jurisdiction on the mere certificate of the State court that a question was raised and decided, it looks into the record to see if the question was really there, and, if not, declines the jurisdiction. If after this court has decided a cause and sent it to a State court for the final order, that court refuses to obey and certifies to this court that certain questions of State law arose and were decided, ousting the jurisdiction of this court, no way is left to this court but either to abandon its constitutional jurisdiction or look into the record and see what is the fact.

(4.) There may be a question on what specific ground the supreme court of Missouri dismissed the plaintiff's petition. The certificate in the record is a curious instrument. It is supposed they did so because they found that Magwire had

a legal title to the land in dispute, and his petition was in equity; and that as he had a plain, adequate, and complete remedy at law, the suit could not be maintained.

Concede for the present that this is so, we insist that the defence of legal title in the plaintiff and plain adequate remedy at law, was not on the record and not before the supreme court of Missouri for adjudication.

(1). Because all forms of pleading based on the distinction between law and equity, were abolished in Missouri prior to the commencement of this suit. 2 R. S. Mo., p. 1216, provides "there shall be in this State but one *form of action* for the enforcement or protection of private rights and the redress or the prevention of private wrongs, which shall be denominated a civil action."

Id. p. 1222: "Suits may be instituted in courts of record by filing in the office of the clerk of the proper court, a petition setting forth the plaintiff's cause or causes of action and remedy sought," &c.

Id. p 1229: "The first pleading on the part of the plaintiff is the petition which shall contain: (1.) The title of the cause specifying the name of the court and county in which the action is brought, and names of parties to the action, plaintiffs and defendants. (2.) A plain concise statement of the facts constituting a cause of action without unnecessary repetition. (3.) A demand of the relief to which a plaintiff may suppose himself entitled. If the recovery of money be demanded the amount thereof shall be stated on such facts as shall enable the defendant and the court to ascertain the amount demanded.

Id. p. 1230: "The only pleading on the part of the defendant is either a demurrer or an answer."

Id. p. 1231: 6. "The defendant may demur to the petition when it shall appear upon the face thereof; either (1) that the court has no jurisdiction of the person of the defendant, or the *subject of the action*; or (2) that the plaintiff has no legal capacity to sue; or (3) that there is another

action pending between some of the parties for the same cause in this State; or (4) that there was defect of parties—plaintiff or defendant; or (5) that several causes of action have been improperly joined; or (6) that the petition does not state facts sufficient to constitute a cause of action; or (7) that a party—plaintiff or defendant—is not a necessary party to a complete determination of the action."

No other grounds of demurrer are allowed by the code. It demands only a cause of action—it need not be named legal or equitable. It does not allow a demurrer for any want of form. The jurisdiction of the court is in no way affected by forms. Should a demurrer say this petition is bad because it is equitable in form, or legal in form, it would not be allowed, without disregarding the plain intent of the code; but this is made plain by section 10, p. 1231:

(10.) "When any of the matters enumerated in section 6 do not appear upon the face of the petition, the objection may be taken by answer. If no such objection be taken either by *demurrer or answer*, the defendant shall be deemed to have answered the same, excepting only the objection to the *jurisdiction of the court over the subject-matter of the action, and excepting the objection that the petition does not state facts sufficient to constitute a cause of action.*"

No one pretends that the land court had no jurisdiction of the subject-matter of the action, which was a claim for land in St. Louis county. No one pretends that the plaintiff's petition did not state facts sufficient to constitute a cause of action.

It is admitted he did state and prove a cause of action, and did pray the very relief he was entitled to; but the defendants think he should have called his suit an ejectment, and so the supreme court of Missouri decided.

If such a point can be made by a defendant under the Missouri code, it was not made either by demurrer or answer, and was *waived* as absolutely as if the waiver had been by a deed filed.

But the Missouri code has another provision pertinent to the case. (Id., p. 1253.)

"No variance between the allegation in the pleading and the proof shall be deemed material unless it has actually misled the adverse party to his prejudice in maintaining his action or defence upon the merits."

This provision vindicates the sense of the others. Its consideration will show how monstrous is the proposition that at the time the supreme court of Missouri dismissed the case any such question as remedy at law in another suit was before it. The suit of Magwire was commenced in 1862, nearly ten years ago, its nature could not have been more definitely stated by pleadings. The petition and answer set forth all the facts. No additional fact could be presented by any party.

The parties tried the cause in 1865, and it is not claimed that any impediment was offered to the presentation of the rights or claims of either. The cause was heard twice in the St. Louis court of common pleas, once in the supreme court of Missouri, twice in the Supreme Court of the United States, and once more in the supreme court of Missouri. It was at length admitted by the court and defendants that the plaintiff had a perfect unqualified right to the land sued for and the damages for the detention of the land.

The parties have spent in this litigation in the past ten years, each of them, say $10,000, and the conclusion is reached by the litigation and avowed by the adversary that the plaintiff's rights are made perfect. But it was insisted just here that the laws of Missouri required his suit to be dismissed and the litigation commenced again before the same court, on the same facts, on the same pleadings, changed slightly in form, on the same evidence, and to establish a right admitted, not admitted only, but adjudged in the cause. Why was this to be done? Why in order that the plaintiff shall call his new suit an ejectment and ask relief by the word "judgment" and not "decree?" This, we are told, is the

law of Missouri. If so, not the less must mankind regard it as a shame upon the State and a disgrace to the name of justice.

If an ejectment suit were commenced as suggested by the other side it would set forth the identical same chain of title—same facts and no others, and pray simply for judgment. Why do this? The code has not required it. The defendants have lost no benefit. They do not pretend to have lost any. The principles of law and equity are different. The distinction between them, we know, cannot be abolished. *But the forms are abolished.* We continue to speak of actions of ejectment and bills in equity. There is no such thing in the code. When a petition presents every fact constituting a cause of action and prays relief the court must give the relief no matter whether it be heretofore legal or equitable.

The code contemplates no other form and no other occasion where justice is to be administered on any man's petition.

4 Duer, 38, Cobb *vs.* West.

The code abolished all rules of pleadings which were merely technical.

Now, only such as truth and justice require are to govern our action.

3 E. D. Smith, 276, Parsons *vs.* Suydam.

When the whole case has been examined the court will disregard any variance not operating to the injury of the other party.

34 Barber, 186, Haight *vs.* Child.

A party in pleading under the code need only state facts. It is not necessary he should draw any conclusions of law on the facts set forth, nor insist on his right under any statute. The proper judgment will be rendered on the case made by the facts set forth.

15 Abbott Pr., 280, Scott *vs.* Pilkington.

If the facts found warant the judgment it will stand.

20 Mo., 229, Robinson *vs.* Rice; 24 How. Pr. R., 438, Butterworth *vs.* O'Brien.

We are now to disregard forms. If the allegations in the petition in any view give the plaintiff a right of recovery he shall have it.

19 Mo., 490, Charless *vs.* Rankin.

He shall have the benefit of all rights legal and equitable.

2 Hilton, 389, Wintendon *vs.* Eighth Avenue Railroad.

A complaint is sufficient if a good cause of action can be gathered from its averments.

27 Mo., 184, Patrick *vs.* Abele.

The proper mode of pleading is to state the facts and pray judgment on the facts.

19 How. Pr. R., 94; 15 Abbott, Pr. R., 445, Durant *vs.* Gardner; 2 Kennon, 336, Margunt *vs.* Margunt.

If these are just expositions of the principles of the code there is in it really no such thing as action at law or bill in equity. Legal history may still furnish such distinctions to our minds, but the distinctions are not in the present code of pleading.

And it is inconsistent with the principles of the code to say that a plaintiff may not have any relief, legal or equitable, which the facts set forth in his petition would warrant, no matter what is the form of his petition. Here the averments are full and complete. The title of the plaintiff and the adverse possession of the defendants is shown and admitted—that is, the facts are all admitted on which plaintiff's title depends.

No such thing as a variance or difference between allega-

tions and proofs shall be countenanced unless the party objecting on such grounds shall have been actually misled or surprised, and lost some benefit by that means, and if a party claim to have been so misled, surprised, and injured, he shall prove the fact to be so, or his claim shall be rejected.

10 How. Pr. R., 321, Egert *vs.* Wicke; 1 E. D. Smith, 579, Colhead *vs.* Tallmadge, 3 Bosworth, 456, Chapman *vs.* Conler.

If a defendant has no merits he cannot be injured, and shall not complain of variance or surprise.

See 1 Sanford, 719, De Payster *vs.* Wheeler.
1 Duer, 210, Harmony *vs.* Bingham.
6 Duer, 294, Hart *vs.* Hudson.
34 Barber, 547, Relyer *vs.* Beaver.
36 Barber, 29; 39 Mo., 471.

There is no authority in Missouri or elsewhere to show there was any legal issue before the supreme court of Missouri on which this suit was dismissed.

If a plaintiff wishes equitable or legal relief, and fails to set forth the facts that show his right to it, he must fail, for he has shown no cause of action. But if a plaintiff sets forth facts authorizing relief, and claims full relief, there is no question on which his claim can be denied under the code.

39 Mo., 471.

(2.) If the code of Missouri has not abolished the forms that distinguish legal and equitable suits, and the same difference of pleading exists as before the code. If "remedy at law" is a defence now precisely as it was heretofore, nevertheless there was *no issue of that sort in this record*. Upon the most stringent application of that defence under the old system of equity pleading, the objection was waived repeatedly by the

defendants. We are not affected by any considerations which belong to equity pleadings commenced in the courts of the United States. This cause comes here from the local courts of Missouri, and must be tried by rules of pleading which obtain in the State courts. The rule which obtained before the Missouri code, was that, unless the defence of "remedy at law'" was taken by answer or demurrer, it was waived. If the defendant answered on the merits of the cause, this defence was waived. If the defendant submitted his cause to the court on its merits, prayed the court to decide upon the merits, or made full defence, this issue of remedy at law went out of the case. The defendant could not set it up on the hearing, and the court could take no cognizance of it—that is, provided the court had jurisdiction, in any form, of the subject-matter. Consent could not give jurisdiction of the subject-matter; but, when the same court had jurisdiction of the subject-matter of the suit in another form, consent was held to waive the form.

2 J. Ch., 369, Underhill *vs.* Van Courtlandt.

By answering in chief instead of demurring, the defendants submitted the cause to the cognizance of this court, (equity,) and they came too late at the hearing on the merits to raise the objection that plaintiff's remedy is at law. It would be an abuse of justice, if the defendants were permitted to protract a litigation to this extent and with the expense that has attended this suit, and then, at the final hearing, interpose this preliminary objection.

2 Caine's Cas. in Error, p. 40, Ludlow *vs.* Simond.

The respondent comes too late with an objection to the jurisdiction of the court, he having answered and contested on the merits, the subject-matter of the bill being within the jurisdiction of the court. This appears to be a reasonable rule * * * to save expenses. * * Where a party objects to

the jurisdiction of the court, he ought to do it at the earliest opportunity.

"Where the common law (said Baron Gilbert) would give the same relief as a court of equity—there, if the defendants will deny the deed and demur to the relief, the demurrer will be allowed; but, if the defendants will not demur, the court will decree for the plaintiff, on the hearing, after the deed is properly proved, *because the defendant admitted the jurisdiction by answering and putting in issue and not demurring.*"

4 J. Ch., 290.

If a defendant (in chancery) intends to object to the jurisdiction of the court, he should demur to the relief, * * he comes too late with this objection at the hearing, after he has by his answer put himself upon the merits.

2 Paige, 509, Grondin *vs.* Leroy et al.

This was a bill of injunction to stay a suit at law on a draft. The defendant answered on the merits, not insisting in his answer that the plaintiff had a remedy at law. Held, that he could not set up that plea on the hearing.

4 Cowen, 727, Hawley *vs.* Cramer.

The defence that there is a perfect remedy at law is not set up in the answer, nor was it objected by demurrer.

It cannot be raised on the hearing unless the court is wholly incompetent to grant the relief asked in any form of proceeding.

4 Paige, 81, Leroy *vs.* Pratt.

The objection is urged that plaintiff had a perfect defence at law. The short answer to this objection is, the defendants have not raised any such objection by their answer, and they are too late in making it at the hearing.

2 Dev. and Bat. Eq., 300, Burroughs *vs.* McNeil.

When the court has no power over the subject, when the

power to pass on it is by the Constitution and laws reserved to a different tribunal, there is a want of jurisdiction, and if this forbidden power is used, the action of the court is a nullity in law; but here the objection is, that the court ought not to act in the proposed way. Certainly, it is a general rule that where plaintiff has an effectual and complete remedy at law, he shall not invoke the aid of equity.

But there is also a general rule that an objection to the exercise of jurisdiction should be taken in due order and apt time or it will be deemed waived.

In this case the objection of remedy at law was not taken by the pleadings, but defendant expressly submitted to the jurisdiction of the court by praying of it to decide on the question of his liability.

1 How. Miss., R. 561, Cable *vs.* Martin.

Complete remedy at law is to be objected by demurrer or answer otherwise it will not be heard.

1 Smedes & Marsh Ch., 550, Davis *vs.* Roberts.

The point was made that the probate court was the proper tribunal, but the court said no notice of such a defence was given by demurrer or answer and overruled it.

1 Clarke, 75, Holmes *vs.* Doll.

The defendant answered that "he hoped to have the same benefit and advantage of excepting to the bill at the hearing for want of equity therein, and for want of proper parties, and for want of jurisdiction as if he had demurred for those or other causes." At the hearing he attempted to insist on remedy at law by virtue of the above generalty and failed.

1 Freemons Ch., 392, Osgood *vs.* Brown.

If the defendants had demurred to the bill or inserted in their answer there was a remedy at law, I should incline to dismiss it for that cause. They did neither and cannot now raise the objection.

1 Bailey Eq., 187, Miller *vs.* Furse.

Chancellor Harper had ruled on a former occasion that the objection remedy at law was good at any stage of the cause, but in Miller *vs.* Furse *he admitted his error broadly* and decided that such an objection if not relied on specifically in the pleading, was not to be heard unless the court was incompetent to try the cause in any form.

The rule is not always confined to courts of equity. In Strother *vs.* Lucas, 6 P., 769, the plaintiff's title was equitable and no ejectment would lie on it in the Federal court, but the case had been tried on the merits and the court decided it on the merits disregarding the question of form.

27 Geo., 353, Many *vs.* Goodwin.

When a defendant has litigated a case for years on its merits, and then moves to dismiss just as it is about to be submitted, final determination on the ground of remedy at law, his motion will be overruled. If the fact be so and he neither took advantage of it by plea or demurrer, he must be adjudged to have waived that objection, a different practice would involve delay and expense oppressive in the extreme. (See further.)

3 Bibb, 384, Fowler *vs.* Halbert.

1 Barber Ch., 432, Supervisor's, &c., *vs.* Utica Manfac. Co.

The court did not consider if the matter of the bill was equitable or not, as the answer made no such point but decided the whole case.

7 Mich., 139, Reed *vs.* Wessell.

3 Abbott Pr., 119, Viburt *vs.* Frost, shows that the same practice obtains under the code. The defence of remedy at law is to be promptly set up or it is waived.

6 Abbott Pr. R. R., 6; 4 Paige, 400, Bank Utica *vs.* City of Utica.

15 How., 419, Wylie *vs.* Cox.

It would be difficult to imagine a mode of waiver which does not appear in this record. Answering on the merits; praying judgment on the merits; repeatedly submitting the cause for trial on the merits; making motions for new trial, grounded on errors alleged in trying the merits; careful and express declarations inserted in the record that the defendants insisted to the last upon their defences on the merits and all of them; failing to allude in the answer to such a defence as "remedy at law;" failing to demur on so many unequivocal waivers of the identical question which the supreme court of Missouri are supposed to have found in this record open for decision.

If the matter depends on the Missouri code of 1855, in force when these pleadings were made, the statute is express that no such issue is in the record—the failure to answer or demur on the ground of "remedy at law" waived it—and, in fact, the code declares that no demurrer shall lie to any petition in respect to the jurisdiction of the court, save jurisdiction over the "person" or "subject of the action." That is, no issue shall be raised in respect to jurisdiction depending on form of proceeding. If the matter depends on the state of the law prior to the Missouri code, it would be impossible to find the issue in question in the record when the supreme court claims to have found and decided it November 14, 1870. When we consider the allegations in the answer of the defendants, the decision of the court wears even a worse aspect. The court decided (as is claimed) that there was an issue pending before them whether plaintiff had not "a legal title, and a plain, adequate, and complete remedy at law;" whereas the answer of the defendants claims title in themselves; declares that the plaintiff has no title, legal or equitable; that his confirmation, survey, and patent, are all absolutely null and void.

Suppose the defendants had answered, in 1862, that the plaintiff had "a legal title and a plain, adequate, and complete remedy at law," what a deal of trouble would have been saved. But they saw fit then to deny plaintiff had any

title legal or equitable. Seven years later they have the plaintiff's petition dismissed because their answer was untrue. That is, they have had the advantage of inconsistent and contradictory defences.

(5) So far we have examined this record as if the plaintiff had shown no title to equitable relief, as if the jurisdiction depended upon the waiver of the defence of legal title and remedy at law in the plaintiff. But such is not the fact. The plaintiff's petition set forth facts sufficient to constitute an equitable cause of action. The grounds of this equitable cause of action are mistake and fraud and cloud on plaintiff's rights and title, and errors of law and fact committed by the Land Office Department in granting the surveys and patent of the defendants, to the injury and oppression of the plaintiff. The petition of Magwire expressly says that the survey and patent for Labaume's representatives were issued and procured by fraud, connivance, and misrepresentation.

The specific facts are, that Labaume knew his land was to be measured from the descent of the road into Rocky branch, 16 arpents south, which was the front of his land on the river; that he asked for the triangle at Rocky branch, to complete his quantity.

That Soulard by mistake or design embraced the whole 4x20 arpents of Brazeau in his survey of 1799, and Labaume knew it; that said survey was contrary to the surveyor's order, as Labaume knew; that Labaume claimed before the board the whole survey embracing the 4x20, though he knew he had title only to 4x16, and the confirmation to Brazeau of 4x4 was for part of the land in said survey; that Labaume and Chambers, Christy and Wright, sold the 4x4 arpents as their own property; that the 4x4 of Brazeau was surveyed in 1817 as inside Soulard's survey "two tracts in one;" that in 1852 the representatives of Labaume applied for and procured a survey appropriating to themselves the said 4x4, and since that time have claimed to own the same, knowing they did not, and entered on and held the same and denied the right of plaintiff, all of which was done with full notice of plain-

tiff's interest in and claim to the land, and that Labaume's survey and patent is a cloud on the plaintiff's title; on the proofs in the cause the court of common pleas found all the issues, fraud included, for plaintiff, which verdict stands now. The proof of all the facts is clear, and this Supreme Court so found, and that the motive of Labaume in procuring and claiming under said survey was to get better land than the grant awarded to him. The answer admits the facts alleged in the petition, showing the title of Brazeau and the acts of Labaume and his representatives in covering the 4x4 by his survey and patent, and claim and assertion of the ownership of it and denial of the plaintiff's rights, which acts are acts of fraud in themselves.

The patent to Labaume is a valid grant from the United States on its face, a *prima facie* title to all the land in Labaume's survey. It is only shown *aliunde*, and by the evidence in the cause, that Brazeau's tract is within the exception which it contains; that is, Labaume's patent is not void on its face. In such case equity has undoubted jurisdiction to cancel or extinguish or limit the effect of so much of Labaume's patent and survey as interferes with Brazeau's.

If the plaintiff could maintain ejectment, that is not the only or the best remedy. When fraud is shown there is concurrent jurisdiction both in law and equity.

5 Littell, 164, Brook *vs.* Corneal.
12 Ala., 734, Burt *vs.* Cassedy.
5 Bev., 41, Wms. *vs.* Fleght.

And an instrument procured by fraud may be cancelled or limited in its uses so as to prevent injury to another.

3 Brown Ch., 16, Ryon *vs.* Wm. Mott, is a well considered case, and a full review of the authorities.

2 Hay, 226, Ward *vs.* Ward, a deed was cancelled though never delivered. The fraud and cloud consisted in asserting its validity.

1 J. Ch., 517, Hamilton *vs.* Cummins.
4 Mon., 380, Leigh *vs.* Everhart.

A forged deed is a cloud, and will be cancelled, because it seems to be valid.

11 Ala., 309, Lyon *vs.* Heart.

Whatever instrument is fraudulent or illegal and impairs the value of one's title, is a cloud.

19 How., 332, Field *vs.* Seabury.
12 Peters, 14, Swazery *vs.* Burke.
7 Wall., 561, Cocks *vs.* Izard.
4 Wall., 236, Hughes *vs.* United States.
6 How., 185, Shelton *vs.* Tiffin.

The demurrer to the bill was overruled because fraud was alleged. When errors are committed by the officers of the Land Department to the injury of one who has procured a title from the United States, a court of equity has jurisdiction to correct the error, whether it be of law or fact, and furnish the remedy on the ground that it is a fraud in A to accept a title paper for land which he knows, or ought to know, belongs to B.

11 How., 567, Hughes *vs.* U. S.
20 How., 6, Garland *vs.* Winn.
14 How., 377, Cunningham *vs.* Ashley.
2 Black, 557, Lindsay *vs.* Hayes,
1 Wallace, 115, Minnesota *vs.* Batchelder.
22 How., 193, Lytle *et al. vs.* Arkansas.
18 J. R., 403, Flemming *vs.* Slocum.
9 Wheat., 532, Smith *vs.* McIver.
14 Vasey, 28, How *vs.* Harwood.
11 Vasey, 535, Lisle *vs.* Lisle.
17 Vasey, 111, 3 Mylne & Craig, 97 Simpson *vs.* Lord Howden.
9 Paige, 388, Vandover *vs.* Mayor of N. Y.
2 Comstock, 118, Cox *vs.* Clift.
6 Peters, 95, Pæriol *vs.* Elliot.
5 Paige, 493, Petit *vs.* Shepherd.
14 N. Y., 541, Haywood *vs.* City of Buffalo.
16 N. Y., 522, 525, 529, Ward *vs.* Decory.

Anything is a cloud that is used to fix doubt or suspicion on the plaintiff's rights.

The opinions of the supreme court of Missouri, and this whole litigation as to the effect of Labaume's patent, survey, and conveyances, is conclusive as to the cloud existing on Brazeau. The community might well regard Brazeau's title as worthless when compared with Labaume's.

8 Paige, 198, Meresdle *vs.* The Mayor, &c.
5 How. Miss., 80, Gladdon *vs.* White.
2 Ala., 571, Kenedy *vs.* Kenedy.

The repeated decisions against Brazeau show that it is a cloud nevertheless.

The Supreme Court of the United States says, in the late decisions, that the whole proceedings ending in the patent to Labaume and the denial of Brazeau's rights "*are obviously characterized by error and injustice from their inception to their consummation.*"

See 21 How., 391, Barber *vs.* Barber; 3 Peters, 210, Boyce, ex'or, *vs.* Grundy.

When, therefore, the supreme court of Missouri decided, as set forth in point No. 2, of their certificate, that under the laws of Missouri the petition of Magwire showed "*no right or title to the equitable relief touching said lands;*" they adjudged that fraud, mistake and error, however injurious to a plaintiff, are not matter for equitable jurisdiction.

And this decision they made in the face of a verdict of the court of common pleas, then in their court, finding the alleged fraud, error and mistake, and never reversed or set aside.

If the supreme court of Missouri has no equitable cognizance of such wrongs when committed by officers of the United States in granting fraudulent title papers, so much the greater reason why this court should exercise it.

It has been argued that the Supreme Court of the United States decided that Brazeau's patent vested a legal title, and consequently the decree of the common pleas was erroneous. There is no ground for this suggestion; on the contrary, the court believed the equitable decree of the common pleas to be correct, and, in the first instance, ordered the supreme court of Missouri to affirm it. This order was modified afterwards, because more in conformity with usage, to direct that court to conform to the opinions delivered here. Doubtless, this court saw and considered the equitable right of the plaintiff to have the full and complete relief he asked for, and an extinguishment of all title really held by defendants or *claimed* by them to his injury under the fraudulent surveys and patent to the defendants, who are the representatives of Labaume.

That this supreme court should have decided that the patent to Brazeau's representatives vested in them a legal title, was immaterial to the merits of the controversy. The parties had wholly sunk that issue by the pleadings. The plaintiff, in his bill, proceeded against the defendants as the owners of the legal title, the equitable right being in the plaintiff. The defendants admitted they were the legal owners; the parties agreed that the legal title was in the defendants; they made an issue only as to who were equitable owners; to this issue all the proofs were directed. Of course the defendants were estopped by the pleadings to deny the legal ownership for any purpose.

It made no odds what might be the legal effect of Brazeau's patent, in the opinion of a learned judge and court. The opinion had no bearing on the jurisdiction, which the pleadings admitted. The patent could have no effect to show a legal title out of Labaume's representatives, because there was no issue as to that. Both parties agreed to the day of trial, and the record shows they agree now that at the commencement of the suit the legal title was in defendants. They will not be permitted now to deny an admission which

has been standing for nearly ten years, in order to defeat this suit.

"When one party admits the allegations of the other by pleading in confession and avoidance, or controverting one of several averments, and thus impliedly acknowledging the rest, an estopel will arise."

Herman's Law of Estoppel, p. 190.

If a defendant were sued in trover and should plead satisfaction for the wrong done, would he be allowed to show on the hearing he never converted the goods?

(6.) We have now considered this case in the light in which it is viewed by the defendants in error, viz: that the supreme court of Missouri found an issue in the record against the plaintiff, that is, that "*Maguire had the legal title to the lands and a plain adequate and complete remedy at law.*" We shall now show they made no such decision. Let us carefully examine the certificate of the court. It contains all that can be relied on here to sustain a diction in the State court, ousting the jurisdiction of the Supreme Court of the United States. We apprehend this certificate is entirely non-committal on every point except the dismissal of the suit.

As to point No. 2, (Record, p. 309,) it says: "no right or title to any equitable relief touching said lands, or any part thereof, is shown by said petition *and the proofs adduced in support thereof*

What does this mean? Does it mean that, though the petition may contain equity, the *proofs* are insufficient? or though the proofs may show an equitable case, it is not in the pleading? Whether it mean the one or the other, what particular question of *local* State law is adjudged here? No man can tell. "*The laws of the State of Missouri*" are paraded through the certificate everywhere. But what laws? The laws of the United States bearing on this cause are as

much laws of the State of Missouri as the *local* laws enacted there. The *local* laws of Missouri are not mentioned. It may well mean, only, that the supreme court of Missouri deemed Brazeau's confirmation void, and his survey void, and the Labaume patent was the only title in the case and no equity conflicting with it.

As to point 3, (Record, p. 309,) this says, "that in conformity with the laws of the State of Missouri the legal title to said lands cannot be tried, adjudged, or determined under the said petition and *the proceedings thereunder*, there being a plain, adequate, and complete remedy by an action of ejectment in conformity to the laws of the State of Missouri in that behalf, and no relief in the proceedings in equity pending before this court."

Observe, that the declaration of law about the legal title and ejectment is entirely abstract. The court does not find Magwire had the legal title. Not at all. They did not intend to commit themselves on that question. When an ejectment is commenced by Magwire, they mean to defeat it. They have only said that the legal title (if there be one) is not triable under said petition and *proceedings*. The court does not decide Magwire has a legal title or any title. They simply decide against him, and do not find that *he, John Magwire*, has a legal title to the land, and a remedy at law on that title. There is absolutely nothing in this finding to commit the supreme court of Missouri to anything in case of an ejectment brought by Magwire.

The court carefully avoids committal.

There is a view in which the finding of the court that the legal title was not triable, is true. It was not an issue. Both parties agreed the legal title was in defendants. There was nothing to try, nothing to decide as to that. The issue was as to the equitable ownership, the *bona fide right* to the land, and that was the only issue for trial, and that the court ignored.

As to point 4, (record, p. 309:)

This states that the pleadings admit that the legal title is

in defendants. That the *only issue is whether it should not be rested in the plaintiff.* This is a fair statement of the case. There was no controversy about who had the legal title.

Whatever might be the fact, ascertained by nice discrimination of acute and learned minds as to the effect of the patents, the parties had settled that issue by the pleadings. Labaume's representatives always claimed the legal title. The courts had repeatedly decided he had the legal title.

This court so held in 17 How., 403, Cochran *vs.* West, and in 1 Black, 195, Magwire *vs.* Tyler. Labaume's representatives took possession claiming legal title. When sued, as having legal title, they admitted they had legal title, and set up an innocent purchase of the legal title.

On this basis, by consent of all the parties, the suit was tried. The equity only was in issue.

Why not, then, try the question in issue?

In point 4, the supreme court of Missouri attempts to answer thus:

(1.) All that could be done in such a case under the laws of Missouri would be to vest the title in Magwire, *if the proof supported his position.* No doubt of it.

(2.) But, in that case, the right of possession (an ejectment) could not be tried.

Certainly not, for the parties made no issue as to that. They had agreed, and had the right to agree, to make issue only as to the equities.

Will any one point out the question of local law decided by this 4th point to oust the jurisdiction of the Supreme Court of the United States?

As to point No. 5, (Record, p. 309:)

This point asserts that, on a petition for an equitable cause of action, a plaintiff cannot recover, by the laws of Missouri, the rents and profits of lands the legal title to which is admitted by the record to be in defendants, even by proof of an equitable title in the plaintiffs.

This is saying simply that the principles of equity law do

not obtain in Missouri, and that justice is not administered in her courts.

Certainly this is a wonderful certificate.

Whoever expected to see such a declaration in a record? What can this Court do but decide that the contrary is the fact?

If the supreme court of Missouri in torturing its ingenuity to get rid of this cause was compelled to decide that, by the laws of Missouri, there is no redress for injuries to equitable property, even in a case where both parties admit it is not legal property, so much the greater reason why this Court should finally dispose of the cause, by entering the proper decree here, and provide for the execution of its decree by its own officers, who are not under the control of the courts of Missouri.

(7.) Another consideration enforces the propriety of a final decree and execution by this court.

The supreme court of Missouri has recently decided that a court of equity in Missouri has no power to execute its decrees in respect to possession of real estate; that a court of equity has *no process* for that purpose can only decree the title, and then the plaintiff must commence a new suit in a court of law to obtain possession!

41 Mo., 257, Peyton *vs.* Rose.
43 Mo., 140, Curd *vs.* Lackland.

The Missouri code contains the following provisions:

"Sec. 27. In all cases where judgment is given for the conveyance of real estate, or the delivery of personal property, the court may by such judgment pass the title to such property without any act to be done on the part of the defendants.

"Sec. 28. The court may issue a writ of possession, if necessary, to the sheriff of the proper county to put the party

entitled into possession, or may proceed by attachment or sequestration."

R. S. 1855, p. 1283.
R. S., 1865, p. 683, sec. 27 and 28.

These provisions of the statute law being older than the decisions quoted last above, are regarded by the defendants as repealed by the legislative authority vested in the supreme court of Missouri. We know of no other court of equity which entertains such a limited opinion of its powers.

It is an ancient maxim of equity law that it "*never does things by halves.*" Whenever the court of equity renders a decree its power to execute its own decree is undoubted.

It not only grants full and complete relief, but secures the fruits of that relief to the suitor.

3 Atkins, 262, Jesus College *vs* Bloom.

In 15 Vesey 180, Hueguenen *vs.* Basely, Basely refused to give possession to Mrs. Hueguenen of the property decreed to him in 14 Vesey.

The Court first sent an injunction, which being disobeyed, a writ of assistance issued, and defendant was put out and the plaintiff put in possession.

1 Hogan, 145, Brown *vs.* Cuffe.

2 Dick., 617, Dove *vs.* Dove; 1 Smith's Ch. Pr., 428; 2 Hoffman, Ch. Pr., 95; 1 Barb. Ch. Pr., 441, says: The court of chancery has power to issue all writs and processes necessary to carry its decrees into execution. In 4 J. Ch., 509, Chancellor Kent said: It is absurd that a court of equity should depend on another court to grant the benefit of its decrees. 10 Paige, 307, Boynton *vs.* Jackwald; 1 Edward's Eq., 272, Devancene *vs.* Devancene; 1 Hopkins, 232, Ludlow *vs.* Lansing. Whenever a court of equity has power to

pass the title to land it has power to put the plaintiff in possession of the land.

1 Har. & John., 370, Garretson *vs.* Cole.
13 N. Hamp., 14, Bufferman's Case.
1 Hopkins, 422, Valentine *vs.* Teller.
5 Humph., 554, Irvine *vs.* McKee.
3 Stockton, N. Jersey, 38, Mead *vs.* Campfield.
5 Littell, 234, McLord *vs.* McClintock.
7 B. Mon., 277, Castleman *vs.* Combs.
7 B. Mon., 653, Kane *vs.* Pilcher.

Fortunately the Supreme Court of the United States is not devoid of means to enforce its decrees. Should it believe that the decisions in 41 Mo. 257, and 43 Mo. 140, have not annulled the statute under which the judge of the St. Louis court of common pleas awarded writs of *habere facias possessionem* in this case this court on entering a final decree here may employ the power granted by the statute of Missouri; but if this court shall regard the Missouri statute as annulled, they must resort to their own powers. (See Rules 9 and 10 of practice for courts of equity of the United States, pp. 32, 33.)

In conclusion we are perfectly satisfied that no reliance can be placed in the Supreme Court of Missouri to concede to our client any right in the property in dispute, in law or equity.

S. T. Glover,
J. M. Carlisle,
For Plaintiff in Error.

Mr Justice Davis

In Supreme Court of the United States.

No. 293.

DECEMBER TERM, 1872.

JOHN MAGWIRE, PLAINTIFF IN ERROR,

vs.

MARY L. TYLER *et al.*, DEFENDANTS IN ERROR.

ON WRIT OF ERROR TO THE SUPREME COURT OF MISSOURI.

BRIEF AND POINTS BY BRITTON A. HILL, OF COUNSEL FOR DEFENDANTS IN ERROR.

[For Contents See Last Page.]

The preceding Briefs in this cause, and the Briefs in the first writ of error on both sides, are referred to in this Brief, as they remain on file in this Court.

THE PURPOSE OF THIS BRIEF is to correct the errors of fact in the opinions in Magwire *vs.* Tyler, 8 Wall. 650, *as to the location of the land, the issues in the pleadings, and other matters, so that on the dismissal of this second writ of error for want of jurisdiction, the Court may correct the said errors drawn from the Briefs of plaintiff's counsel of 1869, admitted by them in January, 1872, to be errors before this Court on solemn argument; so as to leave the question of legal title in Brazeau, asserted by plaintiff in ejectment suits of May last, against the defendants, free and unembarrassed by said opinions of this Court, on all the questions not in issue in the pleadings and over which this Court had no jurisdiction on writ of error to the Supreme Court of Missouri; and further, to ask the Court to reform and explain said opinions of 1869, so that the conflict between said opinions on questions not in issue and over which this Court had no jurisdiction, with the opinions and judgments of this Court in the great cases of* West *vs.* Cochran, 17 How. 413–17, and Magwire *vs.* Tyler, 1 Black, 198–9, *decided on the issues and the merits of this same title, may be explained, to the end that titles held under judicial decisions of this Court for a period long enough to give a title by limitations, may not be disturbed by opinions on questions not in issue, not within the jurisdiction of the Court,* and *coram non judice.*

First. When this cause was argued on the first writ of error, in February, 1869, I insisted before this court that Labeaume had the legal title to the land claimed by plaintiff, and that Brazeau had not. The counsel for plaintiff denied this, and argued that Brazeau had the legal title, and that Labeaume had not, and this Court held under these representations that Brazeau had the legal title. See Brief of Mr. Glover, January, 1872.

The mandate ordered in the opinion was corrected on motion, so that the Supreme Court of Missouri was directed to proceed in conformity with the opinion of this Court; that Brazeau had the legal title in June, 1862, five months before he brought suit in equity to divest Labeaume's legal title to the same land.

The Supreme Court of Missouri proceeded to hear the cause *de novo*, on the pleadings and proofs, in conformity to the opinion of this Court, and decreed:

1st. That plaintiff had no right or title to equitable relief touching said lands, under his petition and *the proofs*.

2d. That the legal title cannot be tried in equity in Missouri.

3d. That plaintiff admits the legal title to be in defendants, and his petition for equitable relief seeks to divest the legal title out of defendants and vest it in the plaintiff by decree, and that possession of the lands cannot be determined or adjudged in this suit.

4th. That the rents and profits cannot be determined in this suit.

5th. That the plaintiff's petition be dismissed with costs.

This decree was in strict accordance with the equity law and practice in the State of Missouri. See Sec. 19, on page 10 of my Brief of 18th January, 1872, and cases cited. The plaintiff sued out this second writ of error, and in December last his counsel filed a motion to advance this cause on the Docket, and in his Brief on that motion, admitted my proposition in the argument of this cause, in February, 1869, was true: that Brazeau had not the legal title to the land, as plaintiff's counsel had contended, and as this Court then decided.

Second. I now propose to review the opinion of this Court in the 8 Wallace, 650 to 673, with the admissions of plaintiff's counsel, in his Brief of January, 1872, and the record evidence, testimony and pleadings, with a view to the correction of the errors of fact in the opinion, and the errors of the Court as to the issues under the pleadings, and on the question of jurisdiction.

This Court had no jurisdiction to try any other case on the first writ of error, than the one presented in the pleadings. The plaintiff admits in his petition that defendants had the legal title under the Labeaume patent, and prays the Court to divest that legal title out of defendants, and vest it in the plaintiff by a decree of a court of equity. This Court, on that petition, held that Brazeau had the legal title, and the defendants had not, which being in direct conflict with the pleadings, and not an issue in the case, this Court had no power to determine it, and the opinion is *coram non judice*, and should be now explained.

The defendants have had no day in Court on this question of legal title in Brazeau, which was admitted by the pleadings to be in Labeaume. The plaintiff's counsel, in January last, admitted this to be so, before the Court, and so declared in his Brief. The Supreme Court of Missouri has so decided in 1870, and both parties admit this Court had no power to try or determine this question of legal title in Brazeau in this suit in equity.

The Court decided this cause in April, 1869, as an action of trespass in ejectment, instead of the pending suit in equity, which is now again before the Court.

The Court has now the power to review and correct this error in the former decision, and all the questions arising in the cause may be re-examined and reconsidered on this second writ of error.

Third. This Court (8 Wall. 670–2), in deciding this case, has held the following results to arise from the record and proofs; *all* of which are in *direct conflict* with the plaintiff's *sworn bill* in equity, and the issues thereon in defendants' sworn answer; and are, therefore, *coram non judice*, as plaintiff admits.

1st. That Labeaume did not acquire the legal title to Brazeau's reservation within his patent, under his patent of 25th March, 1852. (8 Wall, 671, § 9.)

2d. That Brazeau acquired the legal title to the reservation in the southeast corner of Labeaume's patent, by the survey and patent to him of May and June, 1862. (8 Wall. 671, § 12.)

3d. That Brazeau's reservation is located on the ground north of the Labeaume ditch. (8 Wall. 671, § 14; *contra*, *Magwire vs. Tyler et al.*, 1 Black, 198–9; *West vs. Cochran*, 17 How. 413, 417, on the same title.) Of this question the court had no jurisdiction.

4th. That the legal title was in the United States for Brazeau's

reservation until June 10th, 1862, when Brazeau's new patent was issued. (Wall., 672, § 15; *contra*, 17 How., 413, and 1 Black, 198, on same title.)

5th. That Brazeau's title attached to no land before that day, and stood on the confirmation of 1810. (8 Wall. 672, § 16; *contra*, 17 How., 413 to 417; 1 Black, 198.)

6th. That the title of Brazeau, perfected by the survey and patent of 1862, is not affected by the former judgment of this Court in *Magwire vs. Tyler*, 1 Black, 198–9, as that case was not decided on the merits. *Contra* all cases on this title. (Hill's Brief, Oct., 1869, pp. 12 to 16, 44 to 47.)

The plaintiff says in Brief on the motion, that all these conclusions of law stated in the opinion of this Court, 8 Wall. 670, 1, 2, *are in direct conflict with the pleadings sworn to by the parties;* in other words, that no such case as the one decided in 8 Wall. 670, 1, 2, was before the Court under the pleadings on the Record, of which this Court assumed jurisdiction, against the motion to dismiss of defendants in January, 1868. (See B. A. Hill's Brief of January, 1868.) The defendants admit this to be true.

Fourth. The plaintiff admits in his Brief of January 10th, 1872, that "the patent to Labeaume is a valid grant from the United States, on its face, and a *prima facie* title to all the land in Labeaume's survey." (Brief, p. 27, lines 14 to 17; filed by *Mr. Glover*, January 10, 1872.

The statement of plaintiff is true, and is in direct conflict with the 9th section of the opinion of the Court, 8 Wall., p. 671, which declares that Labeaume did not acquire the legal title to Brazeau's reservation by the patent of 1852, issued from the United States to him, under the confirmation of 1810. (*Contra*, 17 How., 413; 1 Black, 198; Hill's Brief, 1869, p. 44.)

Fifth. The Bill in Equity of plaintiff, and the defendants' answer, respectively sworn to by the parties, aver and admit of Record, that Labeaume did acquire the title by patent to this land, in March, 1852, claimed by plaintiff; which is in direct conflict with the finding of this Court in said 9th section of Opinion, 8 Wall., p. 671. This Court, in *West vs. Cochran*, 17 How., p. 413 to 417, on this same title, had held that Labeaume *had acquired* the *title* to all the land in said patent on the 25th of

March, 1852, and that Brazeau had no title to it. In 1 Black, 198–9, this Court held Brazeau's land to be south of the ditch, and that he had no equity.

Sixth. It may be supposed now that the plaintiff is right in saying *that Labeaume had the prima facie legal title* to the land sued for, since this Court so held in 1854, in *West vs. Cochran*, 17 How., 417 and 413, and plaintiff has sworn that it is so, in 1862, in his petition in this case; and the plaintiff insists it is so in his motion to advance this cause, after this Court has held *arguendo, it is not so*, in the Opinion, 8 Wall., 671–2. The defendants may also appeal to the final authority of *Magwire vs. Tyler et al.*, 1 Black, 198–9, that it is so.

The plaintiff has made such positive declarations that *Labeaume* had the *legal title* in September, 1862, that no averment could improve it. (Glover's Brief, January 10, 1872, p. 27.)

Seventh. The next statement in the opinion of this Court is, that Brazeau acquired *the legal title* to the reservation in the south-east corner of Labeaume's patent, by the survey and patent for Brazeau of May and June, 1862. (8 Wall., sec. 12 of Opinion, p. 671.) This decision the plaintiff repudiates in express terms. Mr. Glover says in his Brief, p. 30, lines 17 to 23, that this Court "should have decided that the patent to Brazeau's representatives which vested in them a legal title, *was immaterial to the merits of the controversy. * * The parties agreed that the legal title was in the defendants.*"

The prayer of the plaintiff's bill is to divest this legal title of defendants out of them and vest it in the plaintiff (Rec. 7 and 8), by reason of an equity, which this Court held did not exist in this case because the 4 by 4 arpens lie south of Labeaume's patent. (1 Black, 198–9, on the merits.)

Eighth. If the legal title vested in Brazeau, as this Court says in 8 Wall., 671–2, be *immaterial to the merits of this case, as plaintiff says* in his Brief of 1872, p. 30, lines 17 to 23, what jurisdiction has this Court of this case? (See Hill's Brief of October, 1869, pp. 1 to 12.)

The only point of Federal law in this case stated by this Court to hold jurisdiction is, that Brazeau had *the legal title* by force of

the patent of 1862, and that Labeaume had not. (8 Wall., 664, 2d pargh.; 666, 1st pargh.; 668, last pargh.; 671, § 12.)

As plaintiff's sworn petition in this case states that Labeaume had the legal title, and that *Brazeau had not the legal title*, as this Court had solemnly adjudged in *West vs. Cochran*, 17 How., 413, and *Magwire vs. Tyler et al.*, 1 Black, 198–9; and as the plaintiff insisted in his motion and Brief (pp. 30, 32), it was not within the power or jurisdiction of this Court to hold that Brazeau had the legal title, in the face of the pleadings and its own decisions to the contrary in 17 How., 413, and 1 Black, 198–9, on the same title. (See Hill's Brief, 1869, pp. 1 to 12.)

Ninth. The Brief of plaintiff on this motion leaves this Court defenceless on the question of jurisdiction, and proves conclusively that this Court has entered up a judgment of reversal, *on a question of legal title in Brazeau*, when both parties in the pleadings of this case *had admitted the legal title to the land sued for was in Labeaume* at the time this suit in equity to divest that legal title out of defendants was brought. (Plaintiff's Brief, p. 30, 2 pargh.; p. 32, 4 pargh.)

Tenth. By plaintiff's own showing, this Court has adjudged a case not tried or litigated in the State Court; and he now asks the Court to hear the case in equity and enter up a decree for plaintiff, in direct conflict with the former decrees in the same case, of the St. Louis Land Court of 1858, of the Supreme Court of Missouri of 1859, and of this Court in *Magwire vs. Tyler et al.*, in 1862, 1 Black, 198–9.

Eleventh. On all the points and equities in this case, *except the question of legal title in Brazeau, which is not in issue, and wholly immaterial to the merits of this controversy*, (plaintiff's Brief of 1872, on motion, pp. 30–2), defendants have the judgments and decrees of this Court in 1854 and 1862, and a final decree of the St. Louis Land Court in 1858, on the merits in equity, unreversed and now in force, finding all the facts in the Record for and entering a decree for the defendants. (See Hill's Brief, October 1, 1869, pp. 6 to 12, 12 to 16, 21 to 25, 44 to 47, and the pages of the Record cited.)

Twelfth. The admissions of plaintiff in his said Brief, pp. 27, 30, 31, 32 and 33, are conclusive that Labeaume *had the legal*

title to the premises sued for by patent of 1852; that Brazeau *had not the legal title*, under his junior patent of 1862; that his equitable cause of action was the only one stated in plaintiff's bill in equity (Brief of 1872, p. 26); and that the only Federal question as to Brazeau's legal title, under the confirmation of 1810 and patent of 1862, on which this Court held jurisdiction under the twenty-fifth section of the judiciary act, is wholly "*immaterial to the merits of this controversy.*" (Page 30, plaintiff's Brief.)

Defendants insisted, in 1869, that this Court had no jurisdiction over this case, on writ of error to the Supreme Court of Missouri, under the pleadings; and now the plaintiff admits the facts, appearing on the Record, that prove there was no question of Federal law in the case "material to the issues or merits of the case."

This is the truth, and the Court sees clearly that this case should have been dismissed in April, 1869, for want of jurisdiction. The defendants do not suppose that the Court has any power now to affect the judgment in this case, entered at the December term, 1868; but an opinion may be given now upon these admissions of the plaintiff, that the opinions of this Court, in April and November, 1869, upon the legal titles of Labeaume and of Brazeau, were delivered under the impression that said legal titles were in issue in the case; but as it now appears from the admissions of the parties, and a critical examination of the voluminous Record in the case, that the legal title of Labeaume to the land is admitted, and the legal title of Brazeau under his new patent of 1862 is immaterial and not in issue in the pleadings, all of the opinions of this Court delivered in 1869 may be explained so that neither party may be prejudiced thereby; and since both parties object to the opinions, and claim that the real merits of the case under the pleadings have not been decided, the questions discussed in said opinions may be re-examined upon the issues in the pleadings, as they are made by the record, and a new opinion may be delivered in accordance with the equities, the law, the record and the facts.

As the case now stands, the plaintiff has no legal title to the Brazeau tract, and can claim none, under the confirmation, the deeds, or the record. The only seizin he can claim is by a *scintilla juris*, under the opinions of this Court in April and November, 1869. As those opinions were delivered upon a mistake of

the issues in this case, they should be withdrawn and explained. The Court had no judicial power in this suit in equity to divest Labeaume's legal title, to say, that Brazeau had the legal title to the same land proved by the record and admitted by the pleadings to be vested in Labeaume.

Thirteenth. The plaintiff has no legal title to this land, and never had any, under the title papers in this record now before the Court. If Brazeau had the legal title vested by the patent for the first time, in him or his heirs and legal representatives, in June, 1862, as erroneously stated in the said opinions of this Court, then Magwire, the plaintiff, has no derivative title from Brazeau. (*Vide* Hill's Brief of 1st of October, 1869, p. 29 to 35.)

This Court will not permit a man to set up a legal title upon such a *scintilla juris*, when he has no title of record.

The plaintiff has sued all the defendants and their tenants on this land, in trespass and ejectment, in May last, and has no other pretext or claim of title than the dicta of the Court as stated. I ask the Court to withdraw the dicta now, and let the ejectment suits of plaintiff in the Circuit Court of St. Louis county be tried upon their merits, according to the law and the evidence *dehors* the *scintilla juris*.

If this Court has the power to pass upon the question of Brazeau's legal title when it is not in issue, in direct conflict with the pleadings in the cause, then all questions in all causes, pending or not pending, in issue or not in issue, may be passed upon and determined without giving the parties a trial or a hearing, or notice of the claim or cause of action. If the Court has this judicial power, then all other powers of all other departments of the State and Federal governments of the United States over private rights and titles have come to an end, and this Court is the sole arbiter of all titles, rights and claims to real property.

The Constitution of the United States expressly prohibits this Court from exercising the judicial power of the Federal Government over any issue not made in the pleadings, on this writ of error from the State Court of Missouri, in this case.

The extent of power conferred by the Constitution on this Court over land cases is, "to all cases in law and equity arising under * * * the laws of the United States," etc. (Art. 3, § 2.)

The act of Congress of 1789, § 25, authorizes this Court "to reverse or affirm a final judgment or decree in any suit, in the high-

est court of law or equity of any State, where there is drawn in question a statute of the United States, *and the decision of the State Court is against the title specially set up by either party under such statute*; but *no other error* shall be *assigned or regarded as a ground of reversal* than such as appears on the face of the record, and *immediately respects the before-mentioned questions of validity, or construction of said statutes, etc.* (Conk. Treat., 4th ed., pp. 23, 24; act of 1789, 1 vol. Stat. at Large, 70 to 80, § 25; Curtis' Digest, 273 to 282, and cases cited above.)

The decision of the State Court must be against the validity of the Brazeau title specially set up by the plaintiff, under a statute of the United States, in order to give this Court jurisdiction of that question.

The plaintiff in his pleadings averred the defendants had the legal title to the land sued for, under the Labeaume patent of March, 1852; the defendants admitted this to be so, and the Courts of Missouri had no judicial power in this suit to adjudge that Brazeau had the legal title. *A fortiori*, under the judiciary act this Court has no power to pass on the question of the legal title of Brazeau on writ of error to the State Court in this suit. The *dicta* of this Court on that question are *coram non judice*, and should be withdrawn.

Fourteenth. This Court has no jurisdiction to examine any question of fact not involved in the decision of a point of federal law. The location of Brazeau's reservation on the land sued for, by the monuments, courses, distances and boundaries, is purely a question of fact, to be determined as such, of which this Court has no jurisdiction, and it involves no point of federal law.

Both parties claimed under the same confirmation, made on the same day, and the original question was as to the true boundaries of the lands confirmed to Brazeau and to Labeaume.

This is a question of fact, to be determined by the State Court having original jurisdiction. In every case, except this unfortunate one of Madame Tyler's, this Court has uniformly held that it had no jurisdiction over questions of boundary, between parties claiming under entries, pre-emptions, confirmations or patents. (*McDonough vs. Millandon*, 3 How. 693; *Mackey vs. Dillon*, 4 How. 420; *Almonester vs. Kenton*, 9 How. 1; *Farmer's Heirs vs. Mobile*,

id. 451; *Doe vs. Eslava*, *id.* 421; *Moreland vs. Page*, 20 How. 522; *Kennedy vs. Hunt*, 7 How. 593; *Lanfear vs. Hanley*, 4 Wallace, 204.)

No distinction can be drawn between the cases last cited and this one. Locations and boundaries are always questions of fact, depending on monuments, boundaries, courses and distances and many other facts. The whole stress of the opinion in this case is laid on the location of Brazeau within Soulard's survey for Labeaume, and within the confirmation of the United States to Labeaume on Soulard's survey. On these questions of fact this Court has no jurisdiction, and the decision is *coram non judice* so far as it affects the question of location.

Where a conflict arose between a French grant of 1759 and a Spanish grant of 1788, both confirmed by act of Congress of 8th May, 1822 (3 Stat. at Large, 699), for the same land, the decision of the State Court that the junior grant with possession must prevail was held by this Court to be final in *Doe vs. Eslava*, 9 How. 421; 3 How. 693; 9 How. 1, 9; 9 Pet. 224, 236; *Ross vs. Barland*, 1 Peters, 664; *Minnesota vs. Batchelder*, 1 Wall. 109; *Berthold vs. McDonald*, 22 How. 334; *Calcote vs. Stanton*, 18 How. 243; 3 Wheat. 246; *Ewing vs. Lowry*, 7 How. 172. It is a singular fact that this Court has twice held in favor of defendants' theory of location, in *West vs. Cochran*, 17 How. 413, 15, and *Magwire vs. Tyler*, 1 Black, 198–9. See *res adjudicata*. Hill's Brief of Oct. 1st, 1869, pp. 12 to 18.

This Court has no jurisdiction in this case, to decide upon any question raised in the pleadings, and upon which issues have been made, that are local to the State of Missouri. No issues are presented by plaintiff on the legal title of Brazeau, or that the patent of 1862 to Brazeau covered the land in the patent to Labeaume of 1852, or that Labeaume's patent did not cover the land embraced in Brazeau's patent of 1862, or that said Brazeau's patent was excepted out of the patent to Labeaume.

On the contrary thereof, the plaintiff avers and the defendants admit in the pleadings, that Labeaume's patent covered the whole land within it, and "that on the 26th day of May, 1862, the "United States made a survey of Brazeau's reservation in the "southeast corner of Labeaume's patent, and issued a patent "thereon to Brazeau, 10th of June, 1862."

The opinions in 8 Wallace, 650, 672, state that Labeaume's patent *is not for the same land* as that covered by the Brazeau patent of 1862. It is admitted in the pleadings that Labeaume's patent *is for the same land* as that covered by Brazeau's patent of 1862. This Court had no power, under the pleadings, to pass on this question. It was not in issue, and could not legally be examined in this Court on writ of error from the State Court. The opinion on this question is *obiter dicta* and erroneous. What land Brazeau's patent and Labeaume's patent covered on the surface of the earth, is a question of fact over which this Court has no jurisdiction. What are the facts? The plaintiff's bill in equity avers it is the same land embraced by Labeaume's patent, which is a cloud on plaintiff's title, and prays that defendants' *title*, held by them under Labeaume's patent, may be divested out of them and vested in him. The patent to Brazeau in 1862 avers on its face, *that it is for the same land covered by Labeaume's patent*, and that it is situate in the southeast corner of Labeaume's patent. (Rec., pp. 56–7.) This Court, in the opinions, says *it is not;* in direct conflict with the pleadings in the record and both patents.

Fifteenth. The opinion of this Court in April, 1869, erroneously states that Brazeau's confirmation had never been surveyed by order of the General Land Office prior to 1862. The survey of Brazeau's confirmation was made in 1852, by express order of the Land Office. (Rec. 155, 6, 7.) No survey can be made unless it is ordered by the Land Office.

This question was not in issue in the pleadings, and this Court had no power to pass upon it, on writ of error to a State Court.

The Court erroneously states in said opinion of April, 1869, that no patent was issued to Brazeau, in 1852, for the land surveyed by order of the Land Office, in satisfaction of Brazeau's confirmation. (Rec. 156–8.) Brazeau's patent of 1852 was given in evidence, in 1853, in the Circuit Court of the United States, as an existing, valid patent, and was held by this Court to be so, in *West vs. Cochran*, 17 How., 413–16, 1854. This question was not in issue in the pleadings, and the Court had no power to pass upon it on writ of error to a State Court.

The said opinion further erroneously states, that prior to the survey and patent for Brazeau, in 1862, the title to the land in the

southeast corner of Labeaume's patent was in the United States. This is directly in conflict with the decision of this Court on the same title, in Magwire *vs.* Tyler *et al.*, 1 Black, 198–9, and in *West vs. Cochran*, 17 How., 413–17, wherein it was held that the title of the United States was vested in Labeaume and his legal representatives, by the patent of 1852. The plaintiff in his petition avers that Labeaume had a patent for this same land in 1852; that he had the legal title to this land, and that Brazeau had not the legal title in 1862. The plaintiff admits in the pleadings that the United States had not the legal title to this land in 1852, or in 1862, and that Labeaume had that legal title. This question was not in issue, and the Court had no judicial power to pass upon it. The judiciary act expressly prohibits this Court, on writ of error to a State Court, from passing on a question not in issue in the pleadings. This Court has never before assumed the power to pass upon a question not in issue and in direct conflict with the pleadings, the records, patents and decisions of the Court, on the same title, in a real property case. (Hill's Brief of Oct. 1, 1869, pp. 6–12.)

Sixteenth. This Court has no jurisdiction in this case, to adjudicate or decide upon any question raised in the answer and supported by the evidence on points of law or equity, local to the State of Missouri, and wholly independent of the title set up by plaintiff under acts of Congress. Such defences under local laws are not re-examinable in this Court, where the jurisdiction thereof could not be assumed, and where any judgment or decision thereon would be *coram non judice*. See cases above cited, and particularly the following parallel cases: *Matthews vs. Zane*, 7 Wheat., 164; *Erwin vs. Lowry*, 7 How., 172; *Lytle vs. Arkansas*, 22 How., 203–4; wherein it was considered how far this Court can re-examine the decisions of a State Court, on writ of error, under the twenty-fifth section of the judiciary act of 1789. In *Lytle vs. Arkansas*, 22 How., 203, 4, this Court says: "In their answers the defendants rely on the statute of limitations. As this defence has no connection with the title of Cloyes under the entry, this Court cannot revise the decree below in this respect, under the twenty-fifth section. Other defendants relied on the fact that they were *bona fide* purchasers of the lots sued for, and the State Court so found, and with this portion of the decree we have no power to interfere." (See also *Ross vs. Barland*, 1 Pet. 655.

In the opinion of the Court, this same doctrine is declared and applied to this case. At page 667 (8 Wall.) of the opinion, this Court says that defendants contend "that the answer presented other defences not re-examinable in this Court; and they insist that the Supreme Court of the State, for aught that appears to the contrary, may have decided the case against the plaintiff, and reversed the decree of the Common Pleas upon some of the defences set up in the answer, which are not re-examinable in this Court." This Court proceeds to say that federal questions are involved in the pleadings; "and if it appears that none of the other defences afford any legal answer to the suit," then the case is properly before this Court, etc.

At p. 667–8, (*id.*) of the opinion, the Court says that the former suit of *Magwire vs. Tyler*, 1 Black, 198–9, was not decided on the merits in this Court, because it was founded on a survey by the United States of 1817, on which plaintiff claimed to maintain his suit because it was illegally set aside; and if his view had been correct, this Court would have had jurisdiction on the merits. "But the respondents insisted that the survey had been legally set aside, and the Court so held; and in that state of the case, *this Court could not decide anything* under the twenty-fifth section of the judiciary act, *except the question as to the powers of the Secretary of the Interior to set aside that survey.*"

If this Court could not decide or consider questions of State law in 1861, and was strictly confined then to a question of federal law, how is the present jurisdiction in the same case asserted over questions of State local law, which this Court holds now to have been the law and practice then, and to be beyond its jurisdiction?

I understand the opinion of the Court to admit the propositions of defendants stated in the above points, to-wit: that the jurisdiction of this Court is strictly confined to questions arising under acts of Congress and under the issues in the pleadings; that it has no jurisdiction or power to decide or adjudicate on the validity of defences under State local laws: and yet in the same opinion it is said that the defendants have no defence under the statute of limitations, or the former judgment and decree, or the *bona fide* purchase of William Chambers, of 1816, without notice of Brazeau's claim or equity; that they have no title, when their title is admitted by the plaintiff in his petition; and that the United States has the

title in 1862, when the petition states the title has passed to defendants by the patent of the United States on the 25th March, 1852; and the record shows that the patent issued to Labeaume on a legal survey on that day for this land. (Rec. p. 50, 59 to 62.)

Seventeenth. The effect of the confirmation to Brazeau in 1810, was in issue in this case, and it was a question of federal law, over which this Court had jurisdiction, but the decision of this point was not material, for the defences of the defendants were independent of the claim of plaintiff under the confirmation to Brazeau. It was and is immaterial in this suit in equity whether the confirmation to Brazeau was void or valid.

The legal title of Labeaume's representatives was admitted, and plaintiff's equity to have that legal title divested out of defendants and vested in the plaintiff was the only one before the Court, under the pleadings.

The defendants in this suit in equity have a complete defense under the former decree of 1858 (Rec. 268 to 272) entered upon a bill between the same parties, of which this present one is a copy, excepting only the new patent of 1862. The decree and judgment in said former suit covers all the facts in this case; the cause and object of both the actions in the State Court, and the petitions therein, are one and the same, and hence the prior decree and judgment, being full and specific as to all the equities now set up, bars the present suit as to all matters heretofore determined in said suit between the same parties, and is conclusive record evidence of all the facts adjudged, to-wit: the special finding of facts by the Chancellor for the defendants on all the material issues in the case. (Rec. 268 to 272.)

This former decree is conclusive of this case, and it was approved and affirmed by this Court in that case, in *Magwire vs. Tyler*, 1 Black, 198–9.

That decree is *res adjudicata* as to all the facts found and of all the allegations in this case. That decree is a bar to this suit. (See my Brief of Oct. 1st, 1869, pp. 12 to 16.)

The opinion of this Court comes in conflict with all the findings in the said former decree, which is still in full force, not reversed or otherwise vacated.

I will state the errors in the opinion that are contradicted by the decree, in parallel columns.

The said former decree of 1858 is conclusive record evidence of absolute verity, and an eternal witness not to be impeached, of the truth of the facts established by that record. (See my Brief of 1st Oct., 1869, and my Brief on the merits, of 16th March, 1867.)

ERRONEOUS STATEMENTS IN SAID FIRST OPINION, CONCLUSIVELY CONTRADICTED AND OVERTHROWN BY SAID FORMER DECREE OF 1858.

Erroneous Statements in First Opinion of Court.	Proofs by the Decree of 1858, Contradicting Errors stated in the First Opinion.
1. That the survey of Soulard of 1799, does embrace the whole of Brazeau's concession of 1794, and overlooks the fact that Brazeau reserved to himself four arpens of the same.	1. That the survey of Soulard does *not* embrace any part of the reservation of Brazeau in his deed to Labeaume of 1798. (Rec. pp. 268–9.)
2. That the survey of Soulard of 1799 was *not* made according to the petition of Labeaume, but *was* made four arpens too far south, so as to include Brazeau's reservation.	2. That the survey of Soulard *was* made according to the petition of Labeaume, and does *not* embrace any portion of the land reserved by Brazeau in his deed to Labeaume. (Rec. p. 269.)
3. That Soulard adopted the northern line of the concession to the mulattress Esther as the southern line of the Labeaume tract, in his survey of 1799.	3. The concession to Esther had no definite location by the terms of the grant, but she took possession under said grant of a tract of land between the Big Mound and the river. (Rec. p. 268.)
4. That no space was left between Labeaume's tract and Esther for the owner of the 4 by 4 arpens as reserved in his deed.	4. That Brazeau's reservation was situated on the south side of an old ditch called and known as Labeaume's ditch. (Rec. 270.)
5. That the confirmation to Brazeau was for land within Soulard's survey in the southeast corner, being 4 by 4 arpens in a square.	5. That the confirmation to Brazeau was for four arpens of land as stated in defendant's answer, at foot of Mound, south of Soulard's survey. (Rec. 270.)
6. That Brazeau's reservation was located by the deed creating it, in the south east corner of Soulard's survey north of Labeaume's ditch.	6. That Brazeau's reservation was located south of Labeaume's ditch, and not north of it. (Rec. 270.)

It will be seen that the ultimate facts as to the true location of Brazeau's reservation, found by the decree of 1858, directly contradict the errors stated in the said opinion, and they are conclusive

evidence of record, that the said opinion is erroneous as to those facts. The Federal Court had no jurisdiction over these questions of fact, on writ of error to a State Court, nor of the following facts.

Erroneous Statements in the Opinions of the Court.	Contradictions of these Erroneous Statements by the Former Decree of 1858.
1. Referring to the surveys of 1852, made under the decision of the Secretary of the Interior, the firsst opinion declares: "Extended comments upon those proceedings are not necessary, as they are obviously characterized by error and injustice from their inception to their final consummation."	1. "That the survey No. 3333 for Louis Labeaume, with the ensuing patent thereon of 1852, was obtained without any fraud whatever. That the survey of Soulard does not embrace any portion of the land reserved by Brazeau, in his deed to Labeaume of May 9, 1798." (Rec. 270.)
2. "The patent (to Labeaume) gave no title to Labeaume, because the location was upon an elder concession" (to Brazeau).	2. "The tract of 4 by 4 arpens of land * * is situate * * on the south side of an old ditch, called and known as Labeaume's ditch." (Rec. 270.*)
3. Brazeau's reservation "having never been surveyed at the request of the confirmee, *or by order of the land office*, and *never patented* to the claimant, it remained as it had been throughout, an incomplete title attached to no land." * *	3. "That the U. S. survey No. 3332 for Joseph Brazeau's legal representatives was *made* and a *patent* was issued thereon in 1852, *as alleged in the answer of defendants.*" (Rec. 272.) This survey was official†.
4. "Even those most interested will hardly contend * * that the Court below could have sustained the defense * * * of the Statue of limitations, as the suit was commenced *in less than five months after the official survey was made.*"	4. (The official survey was made) "that the U. S. survey No. 3332 for Joseph Brazeau's legal representatives was made, and a patent was issued thereon, in 1852, as alleged in the answer of the defendants, for the Brazeau reservation." (Rec. p. 272.)
5. Obviously the same facts are also a complete answer to the defence set up by the respondents of a former recovery, founded on the decree in the case of *Magwire vs. Tyler et al.* (1 Black), before cited, as the title to	5. The facts referred to show that the title had passed to Brazeau under the confirmation for the land south of the Labeaume patent and the finding is, "that * * Soulard's survey does not embrace any portion of the land

* Note.—This is conclusive proof that Labeaume's patent did not include Brazeau's reservation, which is found by the record to be situate south of the ditch, the southern boundary of Labeaume's patent. (Rec. p. 269.)

† This reservation was surveyed and patented by order of the land office (Rec p. 51 to 55) in 1852.

the land at that date (1862) was in the U. S." * *

6. "The respondents also alleged that some of their number were innocent purchasers without notice, but the defence is not sustained by the proofs." * *

7. Defendants claim that the patent of 1862 to Brazeau is void because the land therein granted is included in their patent, which is the elder title, but the error of the proposition consists in the theory of fact on which it is founded. Their patent *does not include the same land.*

8. "On the contrary, the land included in plaintiff's patent (of 1862) was excepted out of their patent by the reservation therein contained, because it was a valid adverse right to 4 by 4 arpens of land within those boundaries existing at the time their patent was executed."

reserved by Brazeau in his said deed to Labeaume ** of 1798. (Rec. p. 269.*)

6. "That the conveyance by Labeaume to Chambers in 1816, through whom defendants claim title, was made upon good and valuable consideration, and without any notice of the equities now set up by plaintiff." (Rec. 272.)

7. "Which said survey (Soulard's) does not embrace any portion of the land reserved by Joseph Brazeau in said deed to Labeaume, dated the 9th day of May, 1798." "That * * on 25th March, 1852, a patent was issued by ** U. S. granting said tract of land, described in the * * survey (3333) to Labeaume or his legal representatives, and to his and their heirs and assigns." (Rec. p. 269, 271.)

8. "That the said tract of 4 by 4 arpens which was confirmed to Jos. Brazeau, is situate * * on the south side of an old ditch, called and known as Labeaume's south ditch." (That is south of Labeaume's patent.) "That Soulard's survey covers no part of Brazeau's reservation."(Rec. p. 270, 271.)

It is unnecessary to state any other errors of the Federal Court, contradicted and annulled by the former decree, which literally annuls all of the opinion on questions of fact material to the case.

The statement in the opinion that the defendants set up a defence of former recovery, founded on the decree in the case of *Maguire vs. Tyler et al.*, 1 Black, is erroneous. There was no former recovery, but a decree for defendants, and that decree was made by the State Court, in 1858, and the decree of the State Court was pleaded by defendants (Rec., pp. 17 to 21), and it was averred to have been affirmed by the Supreme Court of the United States.

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* NOTE.—If the title passed to Labeaume as held and found in said former decree of 1858, at the issue of the patent in March 25, 1852, the defence of limitations and former recovery was and is complete. (Rec. pp. 271-2. *West vs. Cochran*, 17 How. 413.)

(Rec., p. 21.) The judgment of this Court in *Magwire vs. Tyler et al.*, 1 Black, 198–9, could not be pleaded as *res adjudicata* with any effect, and no good pleader would be guilty of any such malpractice.

Eighteenth. The confirmation of 1810 to Brazeau *was void* so far as it covered any part of the land within Soulard's survey of 1799 for Labeaume.

The issues in the pleadings on this confirmation are that the Brazeau confirmation was for land south of Soulard's survey, and that Chouteau, the owner of the Brazeau reservation, claimed the land under the confirmation to Brazeau south of Labeaume's land, as *inhabited and cultivated* by him, *within a stockade enclosure*, from 1798 to 1816, when he sold to defendants' grantors and ancestors, who have possessed the same land ever since.

The point in this part of the case is, whether Brazeau could be confirmed for the land enclosed, inhabited and cultivated by Labeaume, from 1798 to 1816, whether he filed a claim for it or not, under the acts of 1805 and 1807.

The defendants do not contest the validity of the confirmation to Brazeau for land south of Labeaume's inhabitation and cultivation as enclosed. If the United States held the title to the land south of Labeaume's tract, and chose to survey and patent under Brazeau's confirmation, though it was illegal, four by four arpens of land, that is a question between the United States and Brazeau.

It is therefore pleaded by defendants in this case, that the confirmation to Brazeau for any land within Labeaume's enclosure, where he inhabited and cultivated the land from 1798 to 1816, is void; that he never filed any claim for any part of that land, and that the Board of Commissioners had no jurisdiction to confirm Labeaume's land to Brazeau.

On this question the defendants are clearly right, and the Court as clearly wrong, as a brief review of the question will show.

The confirmation to Brazeau was held to be valid by the Federal Court, by erroneously assuming that he had *inhabited and cultivated* the land on the 1st of October, 1800, or on the 20th of December, 1803.

The confirmation to Brazeau was made under two acts of Congress passed March 2, 1805, and March 3, 1807 (2 U. S. Stat. at

Large, pp. 324, 440). The first section of the act of 1805 provides only for confirmations "to persons who, on the 1st day of October, 1800, *actually inhabited and cultivated* the lands claimed," under a duly registered warrant or order of survey from the Spanish government made prior to the 1st day of October, 1800. The second section of said act of 1805 provides for the confirmation of settlement rights, where the claimant "did *actually inhabit and cultivate* the land claimed on the 20th December, 1803." The second section of the act of 1807 authorizes confirmations to persons "who on the 20th December, 1803, had for ten consecutive years prior to that day, been in possession of a tract of land not claimed by any other person, and not exceeding 2,000 acres," and who were on that day resident, * * *and had still possession of such tract of land.*

The foregoing are all the claims that can be confirmed under said acts of Congress; and actual inhabitation and cultivation in 1800 or 1803 being required, and the record showing that Brazeau had *no possession* of the land sued for in 1800 or 1803, as required by the act, the confirmation to him is void for this land.

The record of confirmation contains the evidence given before the Board (Rec. p. 38), as follows: "Hyacinth St. Cyr, being duly sworn, says that the said Joseph Brazeau (obtained) the said tract of four by twenty arpens, and cultivated the same in the years 1794, 1795 and 1796; and having sold the same to claimant, he did in the year 1797 put a tenant on the same, who actually cultivated it until the year 1799, *when claimant moved on it;* that he was then the head of a family, and did, prior to and on the first day of October, 1800, *actually inhabit and cultivate the same*, and has continued on it to this day."

This record is conclusive evidence that Brazeau *did not inhabit and cultivate this land* in 1800, or 1803, as erroneously stated in the opinion, and there could be no confirmation to him of the land actually inhabited and cultivated by Labeaume; and the action of the Board, in confirming any land to Brazeau that appears from the record was inhabited and cultivated by Labeaume; under the Spanish survey of Soulard, is *coram non judice* and void, and vests no title in Brazeau. (*Henderson vs. Poindexter*, 12 Wheat., 538–9.)

The testimony of Jacques Labbe (Rec. 188) and of Antoine Smith (Rec. 190–1), old witnesses, is conclusive, that Brazeau never inhabited or cultivated the land north of the Big Mound after 1798, when he sold to Labeaume; and in fact he had another tract of land south of St. Louis, which he did inhabit and cultivate within the terms of the Acts. As he had sold all his grant at the Big Mound in 1798 to Labeaume and Chouteau, he had no right to possess it and did not.

2d. The Board had no jurisdiction to confirm to Brazeau any land *not claimed* by him, according to the 4th section of Act of 1805, 2 U. S. Statute at Large, p. 325; which required every claimant to file his claim in writing with the Recorder of Land Titles on or before the 1st of March, 1806, for the land *actually inhabited and cultivated* by him, "on the 1st of October, 1800, or on the 20th of December, 1803," together with all paper evidences of title, and a plat of the land to be recorded, for certain fees to be paid by the claimant; and "if any person shall fail to deliver such notice, or cause to be recorded such written evidence of his claim, all his rights under the Act shall be void and forever barred."

The 5th section of said act of 1805 confers the only power and jurisdiction possessed by said Board in the following words: "To decide in a summary way, according to justice and equity, on all claims filed with the Register or Recorder, in conformity with the provisions of this act," &c.

It is an incontrovertible fact that since the sale of Brazeau to Labeaume in 1798, Brazeau has not been in possession of the land in controversy for a moment. Labeaume did make entry upon the land sold to him by Brazeau in 1798, enclosed it with a stockade, built houses on it, and he and his grantees have held possession ever since. How, then, under the acts above cited, can the plaintiff or his grantors have title under any confirmation or survey authorized by said acts, to the same land possessed by Labeaume under claim of title? The acts of 1805 and 1807 restricted the confirmatory power to persons inhabiting and in possession, October 1st, 1800, and December 20th, 1803. Brazeau had not such habitation or possession. He had sold all his claim in 1798, and moved to South St. Louis. This court, in *West vs. Cochran*, in 1855,

and again in *Magwire vs. Tyler*, 1862, have adjudged the suit of the plaintiff to be without even a pretext for a claim or title. Since the Labeaume confirmation of 1810, and the patent of 1852, vested the title in Labeaume, it is a necessary result that any subsequent patent on a confirmation to Brazeau, while the fee is outstanding in Labeaume under a prior patent and confirmation, is of no effect and absolutely void.

The Board of Commissioners had no jurisdiction to make the confirmation to Brazeau. The cases of *Henderson vs. Poindexter*, 12 Wh., 538–9; *Wilcox vs. Jackson*, 13 Peters, 449; *Chouteau vs. Eckert*, 2 How. 374; *Strother vs. Lucas*, 6 Peters, 771–2; *id.* 12 Peters, 453–4, 458; *Barry v. Gamble*, 3 How., 50; *Bissell vs. Penrose*, 8 How., 333, 338; *U. S. vs. Percheman*, 7 Peters, 85, 90; and *Thatcher vs. Powell*, 6 Wheat., 119, are conclusive that the Board had no jurisdictoin or power or pretext to confirm any land to Brazeau under the claim filed and prosecuted by Labeaume. Brazeau had no possession to authorize a confirmation; and if he had filed a claim, the Board would have had no right to confirm it, for he had sold all his grant to Labeaume and to Chouteau in 1798.

The Board of Commissioners was an inferior tribunal, inasmuch as by the act creating it, March 2, 1805, "all decisions (of said Board) shall be laid before Congress in the manner thereinafter directed, and be subject to their determination thereon," and hence its decision was not final against Labeaume. but only so against the United States if it had jurisdiction. The jurisdiction to be presumed in favor of the validity of judgments rendered in a court of common-law jurisdiction, will not be presumed in favor of any special statutory court clothed with a special authority like this Board. (*Shivers vs. Wilson*, 5 H. & I., 130; *Thatcher vs. Powell*, 6 Wheat., 119; *Denning vs. Corwin*, 11 Wend., 647, 652; *Smith vs. Fowle*, 12 *id.*, 9, 11.) A court constituted as this Board of Commissioners was, and created for a special purpose, has no common-law intendment in favor of its jurisdiction, but the facts necessary to show its jurisdiction under the acts of Congress must appear on the record of the judgment of the Board rendered in the particular case. Even the Courts of the United States constituted to try causes, are all of limited jurisdiction, and their proceedings are erroneous if jurisdiction be not shown on their face.

(*Kempe's Lessees vs. Kennedy*, 2 Cranch., 185; *Tobias Watkins*, 3 Pet., 202 to 209; *Wood vs. Mann*, 1 Sum., 578, 580, 581; *Skillern's Executors vs. May's Executors*, 6 Cranch, 267; *McCormick vs. Sullivant*, 10 Wheat., 192, 199.) The power of the Board of Commissioners did not extend to all land in Louisiana and Missouri, nor could the Board confirm lands except in accordance with law. (*United States vs. Percheman*, 7 Peters, 85, 90, and 2 How., 674.) Congress did not vest this Board with power to donate land. Its functions were limited to the special cases stated in the act. The Board had no more power to confirm land not claimed before it, according to the requirements of the statute, with proof of actual inhabitation and cultivation and the other requisites, than a court of justice would have to decide upon land titles beyond its jurisdiction. Such a judgment would be a mere nullity; and so an act of the Board confirming land to a man who is not a claimant, who has not filed any notice or made any proof of inhabitation and possession according to the statute, is an absolute nullity. In *Chouteau vs. Eckhart*, 2 How., 374, and *Barry vs. Gamble*, 3 How., 50, this Court held that "the Board of Commissioners had no capacity to grant, but only to ascertain facts and report their opinions," and that "their power to examine did not extend to every description of claim."

Brazeau failed to deliver any notice of his claim, or to do any act required by law, so as to procure a confirmation or give the Board jurisdiction of his claim. The reason why he did not is obvious from the record; for Brazeau, prior to May 9, 1798, sold all his interest in the reservation by a verbal sale to Chouteau (see deed from Brazeau to Chouteau of 1816), and this verbal sale passed Brazeau's title and claim under the Spanish law to Chouteau. (10 Mo. 260; 4 Martin, N. S. 467; 7 Martin, N. S. 315; 3 La., 114). Chouteau had included the reservation "at the foot of the mound" within his extended grant, and has located it between the mound and Labeaume's ditch, according to the U. S. survey and patent of 1852. (See protest of Chouteau of 1818 and 1826, Rec. pp. 107–8.) On the other hand, Labeaume duly presented his notice to the Recorder, claiming, according to his Spanish survey, all the land within it, filed the documentary evidence of his title with said Spanish survey, and had them duly recorded and gave evidence of his *possession* in 1800 and 1803, as

required, thus complying with the law, and placing his claim before the Board for the tract of land which was confirmed to him as defined by the Spanish survey of Soulard. (*West vs. Cochran*, 17 How. 413.) In *Strother vs. Lucas*, 6 Peters, 771–2, it was held that notice of the nature and extent of the claim must be filed, together with all the written evidences of the claim, and all persons neglecting to do so are forever barred; see also *Strother vs. Lucas*, 12 Peters, 453–4 and 458; *Barry vs. Gamble*, 3 How., 54–5, directly in point. *Bissell vs. Penrose* goes beyond *Barry vs. Gamble*, and is conclusive on this question. (8 How., 333–8.) Brazeau never filed any claim before the Board; he had no claim to this land. The confirmation must be to the claimant, the inhabitant and possessor as directed by the Act. (*Landes vs. Perkins*, 12 Miss., 255–6; *Strother vs. Lucas*, 12 Peters, 458; *Barry vs. Gamble*, 3 How.; *Bissell vs. Penrose*, 8 How., 338; 14 Miss., 482.)

The record evidence and all the testimony in the case is conclusive that Labeaume possessed the land within the Soulard survey in Oct. 1800, and on the 20th Dec. 1803; that said survey was duly recorded in April, 1799; and that it was the concession in fact to Labeaume; that the U. S. survey and patent are for the same land embraced in Soulard's survey; that the only concession to Labeaume was the order of survey, and the said survey of Soulard; and that it was Soulard's survey that was claimed by Labeaume and confirmed by the Board. (*Ott vs. Soulard*, 9 Mo.; *Mitchell vs. Handfield*, 33 Mo. 438; *West vs. Cochran*, 17 How. 413.) Hence Labeaume's representatives had a vested right and title under the confirmation, to the land within the Soulard survey, which is the identical land included within Labeaume's patent, and the patent relates back (*Landes vs. Brant*, 10 How.; *Stark vs. Storrs*, 6 Wall.; 8 How. 306–7; *Crowly vs. Wallace*, 12 Mo. 145,) to the confirmation and to the notice of claim in February, 1806, so as to override the fraudulent and worthless claim of Brazeau's representatives to any land within the Soulard survey. *West vs. Cochran*, 17 How. 413, is conclusive on this Court, on this same title. It cannot avail the plaintiff to say that the confirmation to Brazeau was for land within the Soulard survey for Labeaume. The Board has no jurisdiction over the location of any grant. The location was by the Spanish survey and not by the

Board. Its powers were strictly limited and exactly defined by the Acts of Congress. (See *Wilcox vs. Jackson*, 13 Peters, 511; *Chouteau vs. Eckhart*, 2 How.; *Soulard vs. Clark*, 19 Mo. 577; *Barry vs. Gamble*, 3 How. 50.)

Labeaume had a complete confirmation for this land under the laws in force. *Gilbert's Ten.* 75; *Coke's Inst.* 516 or 295–6. All the title of the U. S. in this land on Feb. 26, 1806, the date of Labeaume's claim, was vested in Labeaume and his legal representatives by the patent. (*Green vs. Liter et al.*; 8 Cranch, 229; *Landes vs. Brant* 10 How. 373–4; *West vs. Cochran*; *Ross ex dem Barlan*, 1 Peters, and cases above cited.) The patent to Labeaume, aside from the confirmation, is sufficient to protect the defendants and their grantors against any and every claim of the plaintiff and all other persons to the land sued for, since it is conclusive evidence of title, (*Landes vs. Brant*, 10 How.; *Magwire vs. Tyler*, 1 Black; *West vs. Cochran*, 17 How.); as solemnly held by this Court in 1854 and 1862, on this same title between these same parties. Brazeau, on the other hand, had no confirmation for the land sued for, under any law of the U. S.; he is expressly barred by said confirming Acts of Congress from exhibiting any evidence of his grant or deed in any Court against the Labeaume confirmation; he has no patent for it except the one in 1862, and he neither owned nor claimed to own the land; and yet the plaintiff's prayer in this suit is to divest this indefeasible title out of the defendants and vest it in himself, under the new patent of 1862, for four by four arpens in the southeast corner of Labeaume's patent. Brazeau having sold all his grant of 4 by 20 arpens to Labeaume and Chouteau in 1798, the confirmation to him, and the patent are nullities so far as they cover the patent to Labeaume; and such a confirmation to Brazeau cannot inure to vest a title in Chouteau, the grantor of the plaintiff, who never obtained a deed from Brazeau for the land now claimed by plaintiff under Chouteau.

The confirmation may be good as against the U. S. by way of estoppel for all the 4 by 4 arpens south of Labeaume's inhabitation and cultivation by enclosure from 1798 to 1816, but it is a nullity as to any land within Labeaume's boundaries of inhabitation and cultivation. And this question of Labeaume's boundaries of *inhabitation and cultivation* on the 1st October, 1800, or the 20th

of December, 1803, is one of fact, over which this Court has no jurisdiction.

Nineteenth. ERRORS OF FACT IN OPINIONS OF THIS COURT IN 1869, in the effort to demonstrate that Brazeau's reservation was within Labeaume's stockade enclosure of 1798, where Labeaume inhabited and cultivated this land from 1798 to 1816, built houses, barns, &c.

1st. The court says the deed of Brazeau to Labeaume of 1798 conveys a concession to him, consisting of four arpens of land, "to be taken from the foot of the *hill*, called *la Grange de Terre*," &c.

The words of the deed are * * "of four arpens of land to be taken from the foot of the elevation or hillock (mound), commonly called *la Grange de Terre*," &c. (Rec. p. 35.)

The distinction between *the foot of the hill* and *the foot of the mound* is a marked one, but the court, by following the misrepresentations in plaintiff's Briefs, and the extraordinary topographical map of plaintiff, has found as a fact, that the survey of Soulard of 1799 commenced at the *foot of the hill* or hillock, and that the foot of the hill or hillock is at the south line of Soulard's survey, where Labeaume had built his stockade, so that Soulard included the whole of Brazeau's concession in said survey.

The fact is exactly the reverse of this statement in the opinion of the Court. The beginning point in Brazeau's deed to Labeaume is: "the foot of the hillock or mound, commonly called *la Grange de Terre*" (the Earth Barn). The opinion says it is to begin four arpens and twenty feet north of this point where the barn of earth had been built, with its sides as well defined as a fort or pyramid. This mound had been erected by the Indians as a mausoleum for a chief, and the earth had been taken from the prairie west of the mound for this purpose.

The reservation of Brazeau, as described in the deed of 1798, cannot be located elsewhere than at the beginning point, "the foot of the mound." The Briefs of plaintiff's counsel contradict this plain fact. To support this direct contradiction, the plaintiff introduced a monstrous topographical map, placing the foot of a hill made out of a plain and the mound, four arpens and twenty French

feet north of the foot of the *Grange de Terre*, (Barn of Earth,) the controlling monument referred to in the deed for the beginning. The witnesses on both sides prove without contradiction or difference, that this Barn of Earth is an artificial erection or mound, with its sides as well defined as a fort or pyramid. It is not built *on a hill*, but on a bank of a prairie, commencing four arpens west of the river, rising about seventy-five feet above the bottom land along the river bank. The mound was made by the Indians as a mausoleum for a chief, and the earth had been taken from the prairie near the mound for this purpose.

Rec. 99. A. H. Evans, plaintiff's witness, testified: "The south side of Brooklyn street just suits the north foot of the mound." * * * "Every part of the mound was made." At pp. 100, 101, this witness locates the Brazeau reservation from the words of the deed in the record, as follows:

"I should begin right at the foot of the mound at Brooklyn street, as he says." At pp. 95–6, N. F. Hyer, evidence to same effect. He is the witness Mr. Evans refers to in the words "as he says," *supra*. Wm. H. Cozzens testified as plaintiff's witness. On pp. 121–3, 126–129, 135, of his testimony, he fixes the foot of the mound four arpens and twenty French feet south of Labeaume's ditch, and the concession to Brazeau at the foot of the mound, and the 4 by 16 arpens granted to Labeaume between his ditches 16 arpens apart.

Wm. Milburn, Surveyor-General, testifies to same facts. (Rec. 148–9; see also M. L. Clark, 93–4.) These are all the surveyors who testified to location, and they all agree that the deed of Brazeau to Labeaume of 1798 begins at the foot of the earth barn; and all but Clark agree that the reservation must be located south of Labeaume's ditch; and Clark says "the foot of the mound is all around it, and you could just as well locate it at the south foot or west foot as the north foot." (Rec. 94.)

There is no conflicting testimony as to the true location of Brazeau's reservation, in the deed of 1798, being south of Labeaume's ditch at the foot of the mound. There is a conflict of testimony as to the location of Brazeau's Spanish grant, which calls "for the foot of the hill where the mound stands." But the deed is the instrument creating the reservation, and all concur that the con-

trolling call for the beginning at the foot of *the mound* itself is conclusive, and fixes the reservation south of the ditch, where it has been surveyed by the United States in 1852, under that deed, as required by the confirmation, and patented. This Court has held that survey to be conclusive on all Courts and parties on this same title, in *West vs. Cochran*, 17 How.; and in the *United States vs. Stone*, 2 Wallace, 525, it was held that such a survey can never be annulled.

The topographical map of the plaintiff was made on such a scale as to give the impression to the Court that the mound and bank of the grand prairie formed together *a hill*, with its foot at Labeaume's ditch. This extravagant topographical exaggeration turns the mound on the bank of the prairie into a mountain as steep as Popocatapetl, and the attention of the Court was frequently called to it by the counsel for the plaintiff, as a topographical map of the *mound and hill* on which it stands. A bank of the prairie was there with a mound on it, but no hill.

The true map drawn on a regular scale shows the Barn of Earth 22.5-12 feet high on the bank of the prairie, its north and south foot well defined. The bank of the prairie is 75.7-12 feet high at the mound above the river; the south ditch is thirty-six feet above the river. The distance from the north foot of the Barn of Earth to the ditch is 792 feet. The descent of 39.5-12 feet in 792 feet is not the descent of a hill, and if it were it has no connection with the mound. No one would regard it on a map or on the ground as the descent of a hill. But the topographical exaggeration makes this almost level surface a steep mountain side. By the scale, one inch of elevation represents ~~19.21~~ inches, while one inch of horizontal measurement represents ~~158.4~~ inches. The 792 feet has a base of six inches, and the ninety-eight feet an elevation of about ~~six and a half~~ inches. It makes a mountain out of a plain and a mound.

14.5
154.0

It is by such an exaggeration that this Barn of Earth on the bank of a prairie has been turned into a mountain, and this extraordinary location has been made against all the testimony in the case, and against decisions in the following cases on the same title: *Magwire vs. Vice*, 20 *Mo.*; *West vs. Cochran*, 17 How.; *Picot vs. Bogy*, 26 Mo.; *Magwire vs. Tyler et al.*, 30 Mo.; *Magwire vs. Tyler*, 1 Black; and *Magwire vs. Tyler et al.*, 40 Mo.

Add to these facts and cases a possession of seventy years by enclosures and houses, a possession of twenty-eight years by a boundary line between Labeaume and Brazeau's grantee, Mr. Chouteau, and the case ought to be clearly understood on the question of the construction of Brazeau's deed.

The facts being absolutely established, the construction of the deed of 1798, as a question of State law, must always be, that the land included in the reservation is to be located at the foot of the Barn of Earth, *la Grange de Terre*, or big mound, according to the words of the deed, and not at a stockade fence four arpens and twenty feet north of the monument, called for in the deed creating the reservation.

There is no connection between the foot of the mound and the foot of the hill. The mound is built on the bank of a prairie, and it is as certain a point for beginning as the north wall of a house that might be built on a ridge. The call to begin at the foot of the mound is no less certain than a call to begin at the north wall of the Court House, and such a call cannot be answered by commencing at the foot of some *hill* in the vicinity.

2d. It is stated in the opinion that the Spanish surveyor, Soulard, erroneously included in the survey for Labeaume's extended grant, all of Brazeau's concession, overlooking the reservation of four arpens of land "to be taken at the foot of the hillock in the southern part of said land."

This is the same error of fact just examined, and is conclusively contradicted by the former decree. In addition to these facts, it appears that Chouteau was then the owner of Brazeau's reservation; that Labeaume had inclosed the land he had purchased of Brazeau, 16 arpens long on the river, and 4 arpens wide, in 1798, one year before Soulard's survey of 1799; that Chouteau, as an adjoining neighbor, was present at the survey for Labeaume (Rec. 36); that he saw the inclosures of the 16 arpens front on the river; that Brazeau's lime kiln and cultivated field were south of the ditch, and the cultivation of Brazeau up to the north foot of the mound (Rec. 187–92), 780 or 790 feet south of the ditch. (Rec. 124–9.) The 16 arpens front bought of Brazeau, and inclosed with ditches, embankments and stockades, were not to be taken as said in the opinion, "at the descent of the road into the

creek ;" but they were to be taken as they were inclosed on the ground, and so the Spanish surveyor who represented the sovereign power of Spain understood the petition. He knew better than we can hope to know at this day, where Labeaume's land was to be located; and Chouteau, then owning the reservation, was present and assented to the location and survey of Soulard for Labeaume.

The front was to be 16 arpens bought of Brazeau and already inclosed, by a depth of 20 arpens, making 320 arpens in that parallelogram, and he was to have the angle at Rocky Branch to complete the 360 arpens petitioned for. That angle contains 42 arpens, and if Mr. Soulard had made a strict measurement of the 16 by 20 arpens, the whole area would have been 362 arpens on a petition for 360 arpens. But the land to the west being public domain, Mr. Soulard in extending the north line of the north ditch westwardly 20 arpens, ran the west line at a right angle to the north line, so that the south line to the river was 23 arpens long and increased the quantity to more than 374 arpens. All Spanish surveys overrun. (Rec. 101.)

If Mr. Soulard had placed the north line of Labeaume's five arpens north of Labeaume's north ditch, at the place where the road crosses the creek, then the triangle at the north end by the creek and by the river would have contained about 20 arpens, giving Labeaume about 340 arpens instead of 360 arpens petitioned for. But Labeaume's petition did not determine the land he was to have. The Spanish survey located the land he was to have, and was the foundation of his title in form from the Governor General at New Orleans for that land as surveyed.

The ablest practical surveyors in the city of St. Louis, Wm. Milburn and Wm. H. Cozzens, both make the location of Labeaume's petition precisely as Soulard executed the survey, excepting only the slight increase of the depth westerly. (See evidence, Rec. 146–51, 122-3.)

The legal presumption is, that the act of survey by Soulard was correct, and it being official and authentic, recorded and certified from the archives of the Spanish government, and no other Spanish survey existing, it is conclusive that it correctly describes the land intended to be granted.

If the Brazeau reservation had been included in the Soulard survey, Labeaume's tract would not have been according to his peti-

tion; for it would have had but 12 arpens on the Mississippi, excluding the angle, and only 19 arpens in depth at the south end, and would have contained only 304 arpens in the parallelogram and 42 arpens in the angle, or 346 arpens in all. I refer to a plat, in the margin.

3d. The opinion of the Court seems to hold that the Soulard survey was invalidated by the grant of the Lieut.-Governor; but there was no grant as stated. The Lieut.-Governor simply ordered a survey to be made for Labeaume, so as to procure the formal title from the Governor General at New Orleans. The petition was not referred to by the Lieut.-Governor for boundaries, because he ordered the survey by Soulard to establish the boundaries, and so the survey states. (Rec. 36.)

4th. The opinion finally places the main stress of this question of location on the force of the words: "to be taken from the foot of the hillock, and to be bounded at the opposite extremity by the Rocky Branch." The answer to this has already been stated under 1st error *supra*, and the point that plaintiff has no derivative title from Brazeau. (See my Brief of October, 1869, p. 29.)

5th. The opinion speaks of a change of location by Soulard, four arpens south of a location previously made. There could be no such change, for there had been no previous location by the Lieutenant-Governor or the Surveyor. No surveys had been made for Brazeau or for Esther. Labeaume's was the first, and was conclusive that it was correct. (*Menard's Heirs vs. Massey*, 8 How.; *West vs. Cochran*, 17 How. 413; *Landes vs. Brant*, 10 How.)

The concession to Esther had not been surveyed. It was annulled in 1797 in part, and afterwards was annulled *in toto* by the Lieutenant-Governor, and Mr. Chouteau took the Esther land. Soulard could not have adopted any line of Esther as the south line of Brazeau's concession, as stated in the opinion, because no such line of Esther existed. The location of Esther is wholly uncertain, even if the forged plat is invoked to aid its location. The former decree so finds it. (Rec. 269.)

Esther possessed the grant to her, as land lying between the Earth Barh mound and the mounds south; that it was situate at

the foot of the mound, running thence to the river, or running from the descent of the hill, between said mound and the river. (Rec. 238.)

The criticisms in the opinion on the grant to Esther I can't verify by the record, because by some accident or design the French grant has been left out of the record. See p. 236 of Rec., where the petition of Esther is found only, while at pp. 31, 32, the translations are given of the order of survey and grant.

The French words of description in the Esther grant are: "*... situee au nord de cette ville, alors la partie du nord, de la presente concession, sera situee entre la monticule nommee la grange de terre et les ecors du Mississippi en descendant le dit fleuve, jusqu' a la concurrence et etendue des susdits vingt arpens de profondeur,*" &c.

TRANSLATION.—"Situated at the north of this town, the north part (end) of the present concession shall be situated between the hillock, named the Barn of Earth, and the banks of the Mississippi, thence descending the said river as far as the complement and extent of the said twenty arpens in length."

The mound is the object that fixes its locality, and the space between that object and the river constituting the place of beginning for its northern extremity. The south line of Brazeau's concession exactly corresponds with this call. The north part of Esther is to lie between the Earth Barn and the river; not above it, or below it, but between the Earth Barn, one and one-half arpens long, and the river.

What line could so exactly fit this call as Brazeau's at the north foot of the mound? Esther's might be an arpen further south, and answer the call, since the north part would still be between the mound and the river; but if it were a rod north of the mound, the call would be bad, for the north part would in that case be *above* the mound, not between the mound and the river. A line that shall give the *whole space* between the Earth Barn and the river, answers the call to the utmost, and does not go beyond it. Brazeau's south line, exactly at the north foot of the mound, does this, and places the north part of Esther's grant wholly "between the mound and the river," neither jutting over nor falling short.

The figurative plat of Esther is contested as a forgery; but if it were genuine, the ancient possession of Esther south of the mound,

of Brazeau up to the north foot of the mound, and of Labeaume and Chouteau each side of the ditch, would be conclusive of the original locations, and become final in such a case where no Spanish survey was made of either tract.

The proceedings on the survey and grant to Ant. Roy (Rec. 111–113) shows that Clamorgan, who bought the claim of Esther, his concubine, objected to the survey of Roy, for the reason that it covered the same land previously granted to him, but the Lieut.-Governor annulled the Esther grant to the extent of Roy's survey. This would show that Esther's grant could not extend one arpen above the mound (Rec. 124–38), and the plat must be an interpolation. (Rec. 240.) It is the only marginal interpolation in the six books of Spanish records, and bears unmistakable evidences of forgery.

6th. The statement in the opinion that Labeaume presented his claim to the Board in 1806, stating that the concession of 374 arpens to him included the whole four by twenty arpens of Brazeau, is erroneous. No such claim was filed by Labeaume. His claim was in French, and the translation appears on page 47 as follows: "Abstract of lands claimed by Louis Labeaume, and of which the titles, &c., plats, &c., have been delivered by him to the recorder of land titles, in order that they be registered and recorded by him, according to the Act of Congress approved the 2d March, 1805—"

"No. 2. Louis Labeaume, 374 arpens of land conceded in part to Joseph Brazeau the 20th June, 1794, and the other part to Louis Labeaume the 15th February, 1799. Settled and cultivated since both these dates. Louis Labeaume."

The entry referred to in the opinion is by the Clerk of the Board, and has been held in *West vs. Cochran*, 17 Howard, 413, 415, and in *Magwire vs. Tyler*, 40 Mo. 432–437, to be of no force.

7th. The statement in the opinion, that testimony was given before the Board that Brazeau and Labeaume had inhabited and cultivated the land to that date, 1806, is erroneous in this: that said evidence shows that Labeaume *alone* inhabited and cultivated the land in Soulard's survey in 1800 and in 1803, as required by Act of Congress (Rec. 38), and that Brazeau did not, but inhabited and cultivated another tract south of St. Louis.

8th. The opinion is further erroneous in stating that any proofs exist in the minutes, showing that the original donee, Brazeau, inhabited and cultivated the tract early enough to bring the case within the condition specified in the act. The tract was never *inhabited* by Brazeau; he cultivated it in 1794, '95 and '96, sold it in 1797 to Labeaume, deeded it to him in 1798, and Labeaume *inhabited and cultivated* it exclusively from that time forward. The act requires the *inhabitation and cultivation both* on the 1st of October, 1800, or on the 20th December, 1803—not before those dates. Labeaume inhabited and cultivated the land at those periods, and Brazeau did not.

9th. The opinion erroneously states that Labeaume knew he had no title to the 4 by 4 arpens reserved in the deed of Brazeau to him of 1798. Mr. Labeaume could not know that the reservation located at the foot of the mound, by the deed and all the surveyors, was in another place, within his inclosures, which cost him more than ten times the value of the land.

If the reservation was at the foot of the mound, as it is proved to be, Labeaume never claimed it or had anything to do with it, but Chouteau claimed it, who owned it under sale from Brazeau.

10th. The opinion states that the confirmation to Brazeau was according to the reservation in the deed of 1798, and draws the inference that the Board intended to confirm the 4 arpens to him inside of Soulard's survey for Labeaume. In *West vs. Cochran*, 17 How., 413, and *Magwire vs. Tyler*, 1 Black, 198–9, this Court held exactly the opposite, and the deed located by the surveyors, without any conflict in their evidence, fixes the Brazeau reservation at the foot of the mound, south of Labeaume's south ditch.

As the reservation was confirmed according to the deed of 1798, the words of description in that deed must govern, and no intent of the Commissioners, in violation of the language of the confirmation, can be presumed. The certificate of confirmation to Brazeau is that his confirmation must be surveyed at the foot of the mound, south of the ditch, where it was surveyed in 1852. This Court held this to be true, in 1 Black, 198–9, on this same title.

11th. The statement in the opinion, that Brazeau's confirmation was undefined and vague, is antagonistic to the preceding part of the opinion, which purports to demonstrate that Brazeau was precisely in the southeast corner of Soulard's survey for Labeaume, in a square; and if so, his location was absolutely fixed and certain. After this point is declared to be clear, and the reservation fixed to a mathematical certainty, what does the Court mean by saying Brazeau's reservation was vague and undefined, and subject to the operations of the surveying department before the title could pass? If the argument in the opinion to establish the location inside of Soulard's survey be valid against conclusive record evidence to the contrary, the reservation was not vague, but defined, and no surveyor could fix it otherwise. But if the reservation be vague and not located, then the operations of the surveying department became conclusive, and the Courts cannot interfere. (*West vs. Cochran*, 17 How. 413–17; *Menard's Heirs vs. Massey*, 8 How.)

In this labyrinth of errors, it is difficult to comment upon them. The truth and the errors are so patent that human ingenuity can add nothing to the fatal conflict between the truth and the errors.

12th. The rule stated in the opinion, that Courts of Justice have no jurisdiction to determine the controversies between two claimants under the former government, setting up independent, imperfect claims to the same land, appears to be irreconcilable with the same opinion, which does pass upon the equities and locations under the Spanish law and ordinances of the two imperfect claims of Brazeau and Labeaume, and gives Brazeau the elder equity under the Spanish laws, who had no title claim or property in the land after 1798, and who cannot have any judicial equity, since it is admitted in the opinion that the power to survey and vest title on a vague grant is a power reserved to the Executive Department, and the Courts of Justice have no control over it. (*Le Bois vs. Brammell*, 4 How.; *West vs. Cochran*, 17 How. 413–17.)

If this be so, by what authority does the Court now exercise control over it, and disturb it after it has been twice adjudicated here in favor of defendants?

13th. The statement in the opinion, that the survey of 1817 was made at the request of Labeaume, is erroneous. (See Record,

143–5.) Labeaume had sold to Chambers in 1816, and had left St. Louis. The survey of 1817 was one of those made in the interest of the New Madrid speculators. H. Peyroux's claim was immediately afterwards located over Brazeau's reservation south of Labeaume's ditch, at the foot of the mound, and the other lands south. The history of these fraudulent surveys and of the defaulting Surveyor-General Rector, appears in the reports of this Court, in the cases of *U. S. vs. Farrar et al.*, 3 Pet. 459; 5 Pet. 373; *Stoddard vs. Chambers*, 2 How.; *Barry vs. Gamble*, 3 How.; *Bissell vs. Penrose*, 8 How; *Rector vs. Ashley*, 21 How.; *Easton vs. Salisbury, id.*, and many other cases. They were all like the Rector survey for Peyroux, mere illegal acts to effect the destruction of the titles of the French inhabitants. The old surveys were to be made so as to leave vacant spaces for the land pirates to locate with earthquake certificates. Chouteau was surveyed up to the north foot of the mound, and Labeaume to the ditch, so as to leave the space for Peyroux's earthquake certificate to be located between them on the Brazeau reservation.

The astute dishonesty of these devourers of Spanish titles did not fail to detect the error of the clerk in the minutes of the Board in this case, and the vacancy south of the ditch, and north of Chouteau's United States survey, was marked as their prey. They located in hot haste on all the land south of Labeaume's ditch on the river for 160 acres; and the cries of Mr. Chouteau, the plaintiff's grantor, reached to the General Land Office, protesting against this outrage, in locating Peyroux so as to cover *all of Brazeau's reservation lying between the mound and Labeaume's ditch.* (Rec. 106–8 of Chouteau's protests.)

14th. The error in the opinion stating that the survey of 1817 was correct first appears *arguendo* in *Magwire vs. Tyler*, 1 Black, 200, wherein the Court attempts to support its jurisdiction over the case when it had none, under the theory that the Secretary of the Interior had set aside that survey of 1817; but, in fact, no such survey ever had any legal existence. It was made in violation of law, signed by mistake, rejected by the Recorder of land titles and never recorded, so that it was a nullity. (See Rec. 89–90, 142–4, 150). *Gamanche vs. Piquinot*, 16 How., so holds.

The Secretary of the Interior never passed on said survey, for it

had no existence in the General Land Office, and is not mentioned in his opinion. (Rec. 222 to 230.)

15th. It is further erroneously stated *arguendo* in said case of *Magwire vs. Tyler*, 1 Black, 200, that Magwire was the representative of Brazeau for the land called the Brazeau reservation, and the Court has now made the same erroneous statement. Since the decision in that case, and after Magwire brought this new suit, the defendants have furnished conclusive evidence of the fact that Ann Biddle's trustee and devisee was the legal representative of Brazeau, claiming the reservation to lie south of the ditch and within the patent, and her agent demanded the patent issued to Brazeau therefor in 1855. (Rec. p. 45, 164, 167, 312, 313, 316, 153, 155 and 159.)

The Supreme Court of Missouri, in *Picot vs. Bogy et al.*, 26 Mo. 399, and *Magwire vs. Tyler*, 30 Mo., held that Ann Biddle's trustee, Picot, claiming Brazeau's reservation south of the ditch, under the patent of 1852 to Brazeau, was the legal representative of Brazeau for the lands lying south of Labeaume's ditch, and that it is a fraud on Ann Biddle and others for the Marine Railway Company to grant to Magwire, their champertous agent, the same reservation north of the ditch which they had held by the same title under the patent of 1852, south of the ditch. See opinion of Mr. Justice Scott, in *Magwire vs. Tyler*, 30 Mo., and in Rec. 306, 7, 8, as to the bad faith of the Railway Company in jeopardizing the titles of their vendees south of the ditch, by setting on a champertous land pirate to sue for the land north of the ditch. The State Court says the prior vendees are to be protected in a Court of equity, and the Railway Company estopped or enjoined from doing this great iniquity.

16th. The error and injustice mentioned in the opinion, in getting the surveys of 1852, must refer to the acts of the plaintiff, and Secretary Caleb Smith, in giving Magwire a survey for any land he asked for, so as to enable the plaintiff to wrongfully claim the right to take away the vested estates of the widow and orphan, and at the same time perpetrate a great iniquity upon the grantees of the Company south of the ditch, as shown by Mr. Justice Scott. (Rec. pp. 306–8.)

The legal representatives of Brazeau to all his reservation, demanded the patent, insisted on the survey, and still hold under both, as the Brazeau survey and patent of 1852, and although the patent has been recalled, *the survey has never been set aside.* Caleb Smith merely gave Magwire a second survey for any land he wanted, and he took one inside of our patent; but if Brazeau has any land there, Magwire is not his representative. (See my Brief of Oct. 1869, p. 29.)

Magwire's refusal to receive Brazeau's patent has nothing to do with the case. The U. S. survey of 1852 for Brazeau has never been set aside. It appropriates the land, it satisfies the confirmation, it is conclusive on all Courts of Justice as to location, and it cannot be set aside by any subsequent Secretary. (*U. S. vs. Stone*, 2 Wallace; *West vs. Cochran*, 17 How., and cases cited.

The Court, therefore, must have held that Caleb Smith's order of survey in 1862 of the land in Labeaume's patent of 1852, had the effect to locate the Brazeau confirmation in a new place, in violation of the Acts of Congress. As the two surveys of 1852 for Brazeau and Labeaume are both conclusive on Courts of Justice, and as neither of them contain any reservation or exception, how does the new creature of Belial, the new survey of 1862 of the plaintiff's request get into the patent of 1852, and exclude the operation of that survey of 1852 as conclusive evidence of location. (*Mackey vs. Dillon*, 4 How.; *Le Bois vs. Brammell*, 4 How.; *West vs. Cochran.*) But this cannot be done; the old surveys remain conclusive, and the order to the Commissioner of the General Land Office in the patent certificate, is to issue the patents to Labeaume and to Brazeau in 1852, according to the specific description in the survey for each party. The Commissioner had no power to insert the so-called saving clause, which is now held to be a destroying clause. The land was granted according to law, and not in accordance with the discretion of the Commissioner. He was to issue the patent for the whole of the land surveyed to each party without exceptions or reservations. This is the mandate of the law, and Courts of Justice are bound to presume that he obeyed it. (See point on Statute of Limitations in my Brief on motion, Oct. 1869.)

16th. (*a*) The opinion of the Federal Court further erroneously states that Labeaume's patent of 1852 *is not for the some land* as that covered by the Brazeau patent of 1862. This is a pure question of fact. What are the proofs? The plaintiff's bill in equity says it is the same land embraced by Labeaume's patent, that it is a cloud on the plaintiff's title, and prays that defendants' title so held by them under Labeaume's patent may be divested out of them and vested in him. The Brazeau new patent, of 1862, declares on its face that it is for the same land covered by Labeaume's patent and that it is situate in the southeast corner thereof. (Rec. pp. 56–7.)

The patent of 1852 to Labeaume, is for the whole of the land included in the U. S. Survey for him, No. 3333, and is issued thereon. There was at that time, under the judgments in this case, no valid adverse right in any one, to this land patented to Labeaume. The question of fact is the one to be settled, and it is absolutely true, that Labeaume's patent of 1852 exactly covered the land, (Rec. 59 to 70,) that no interference with Brazeau's reservation is stated in it, that a patent for Brazeau's reservation was issued to him in 1852 for the land south of Labeaume's patent, at the foot of the mound, and when Brazeau's patent of 1862 was issued, *it states on its face that it is for the same land in the southeast corner of Labeaume's patent and covered by it.* Labeaume's patent is therefore conclusively proved by the record to be for the same land covered by the new patent to Brazeau, though the Court denies it in the opinion; and the plaintiff, in his petition, expressly avers this to be so, to give the State Court jurisdiction in equity, to divest the title of Labeaume's representatives to the title so vested by the patent of 1852.

17th. The opinion further erroneouly states, that Brazeau's confirmation had never been surveyed by order of the Land Office prior to 1862. The survey of Brazeau's confirmation was made in 1852, by express order of the Land Office. (Rec. 155–7.) No survey can be made except by order of the Land Office.

18th. The opinion erroneously states that no patent was issued to Brazeau in 1852. There was a patent issued on the confirmation to Brazeau in 1852 for the land surveyed by order of the Com-

missioner of the General Land Office, in satisfaction of Brazeau's confirmation. (Rec. 156-8.) That patent was given in evidence in 1853, in the Circuit Court of the United States, as an existing valid patent, and held by this Court to be so in *West vs. Cochran*, 17 How., 413 to 416.

19th. The opinion further erroneously states, that prior to the survey and patent for Brazeau, in 1862, the title to the land in the southeast corner of Labeaume's patent, was in the United States. This is expressly contradicted by the plaintiff's bill, by the Acts of Congress, and by all the records, patents and decisions of the Court on this title.

20th. The opinion further states that Brazeau never sold the reservation to Labeaume. This is true. Brazeau sold the reservation to Chouteau before 1798, who always claimed and located it south of Soulard's survey, and agreed to a boundary fence in 1799, between him and Labeaume, to separate the said reservation from Labeaume's land, included within Soulard's survey, and the parties have held by the line of said boundary fence over 70 years; Chouteau, the owner of the reservation, always affirming, in solemn official protests, that the reservation is located at the foot of the mound, south of the south ditch of Labeaume, and Chouteau's grantees have accepted a survey and patent of 1852, for the land south of Soulard's survey, and Magwire and his grantors are representatives of Chouteau and of no one else, for this reservation south of Labeaume's ditch.

21st. The opinion further states that Labeaume never had any concession of the reservation; that he never purchased it, and never had any title of any kind to any part of it. All this is true, and signifies nothing, for the reasons stated under the 20th section of this criticism. The reservation in 1798 was south of Labeaume's stockade and ditch, and it is now, and always will be, south of Soulard's survey of 1799, and of Labeaume's patent. Its location was fixed in 1798 at the foot of the mound, four arpens and twenty feet south of Labeaume's stockade boundary, and this fact cannot be overthrown by the opinion or affected by it. Conclusive record evidence of said former decree of 1858, between these parties, where this same question was in litigation, settles the fact

forever that the said reservation is eternally fixed by that decree, at the same place.

22d. The opinion declares the defendants would not contend that the Court below sustained the defence on the Statute of Limitation. This is precisely what defendants do contend, under the rulings of this Court and our State Supreme Court. It is not correct, as stated in the opinion, that the title to any land within Soulard's survey was in the United States after 1852. Both bills of plaintiff aver the title to this land to have been vested in defendants' grantor, Labeaume and his heirs and assignees, by the patent of 1852, and the first decree must bar the present suit in equity, which proceeds on the same identical theory; and if it were true that plaintiff acquired the legal title in 1862, his bill in equity must be dismissed.

23d. Power to revise the surveys for Labeaume and Brazeau existed as stated in the opinion, but the survey of 1817 never existed; it was annulled by the Recorder of Land Titles in 1832. (Rec. p. 142.) The plaintiff never claimed title under the survey of 1817, because it never had any legal existence as an official survey. The plaintiff claimed in the former and present suit in equity, that the defendants had the legal title vested in them by the patent, and sought to divest it and have it vested in plaintiff, by showing that he had equitable grounds to obtain such relief.

But the official surveys of 1852 were finally made and approved by the Commissioner of the General Land Office, under orders from the Secretary of the Interior, in Feb. 1852, locating the reservation at the foot of the mound, south of Labeaume's patent, and finally settling both locations forever. (*Stone vs. U. S.*, 2 Wall.)

The survey of 1817 was not set aside by the Secretary of the Interior or the Commissioner of the General Land Office, as stated. The surveys of 1833 and 1837 were set aside by the surveys ordered in 1851, and for the first time Brazeau was located by law south of Labeaume's patent; and this having been done by the supreme authority in the premises, is conclusive. Moreover, Brazeau's grantees accepted the survey and patent south of Labeaume's patent, and are forever estopped by that acceptance. (See my Brief of October, 1869, pp. 49–51.)

24th. Plaintiff never had any theory or claim under the survey of 1817, as stated in the opinion; that theory is first stated in the opinion, in opposition to all the facts and records and the plaintiff's petition in each case in equity.

It was further a mistake to say that "the distinction as to the remedy between legal and equitable titles is not observed" in Missouri, or that the defendants insisted that the survey of 1817 had been legally set aside, or that the Federal Court acquired jurisdiction because the Secretary of the Interior had set it aside, or that the Justices who decided this case in 1 Black, 198, did not know they had made a final decision.

It is erroneous that the Federal Court did not consider the merits in 1 Black, 198, as stated in the opinion, or that it did not decide on that subject. The merits were decided, and the original decree was affirmed and became conclusive forever. Read the case, which is directly in conflict with the opinion of April, 1869, as to the facts of location. (pp. 198–9.)

It is not true that the defendants did not claim as innocent purchasers, or that the decree of the State Court did not pass on that defence. The former decree of the State Court, in 1858, found this defence to exist, and had become conclusive record evidence of its truth, having been affirmed in the Supreme, State, and Federal Courts.

Twentieth. THE PLAINTIFF IS ESTOPPED AT LAW AND IN EQUITY FROM CLAIMING OR RECOVERING THE BRAZEAU RESERVATION WITHIN LABEAUME'S PATENT, BECAUSE HIS GRANTORS AND THEIR GRANTEES HAVE ACCEPTED THE SURVEY AND PATENT OF 1852 FOR THE SAME RESERVATION SOUTH OF LABEAUME'S PATENT.

The Brazeau confirmation is valid as against the United States, for the land surveyed and patented to Brazeau, south of and adjoining Labeaume's patent, by the law of estoppel.

Only *one title* can pass to a claimant by force of the confirmation of 1810 to Brazeau. The 6th section of the Act of 3d March, 1807, requires the description of the specific tract to be given by the Board of Commissioners, in their act or judgment of confirmation. (U. S. Stat. at Large, vol. 2, p. 441.)

If no Spanish survey has been made of the tract confirmed, an United States survey must be made to fix the location and sever the land from the public domain. No Spanish survey had been made for Brazeau, and by the Spanish law, his reservation could not be surveyed within Soulard's Spanish survey for Labeaume, without annulling the Labeaume survey of 1799, to that extent.

The United States survey for Brazeau was made in February, 1852, in strict conformity with the confirmation, which directed the four arpens confirmed to Brazeau to be surveyed "according to a reserve made in a sale from Joseph Brazeau to said Louis Labeaume, recorded in Book C, page 339, of the Re'corder's office." (Rec. 38–39.)

The patent certificate to Joseph Brazeau of June, 1811, is to the same effect. (Rec. 39.) The land of Brazeau was to be surveyed, according to that deed, "*at the foot of the mound, south of Soulard's survey for Labeaume.*" The United States has surveyed the land there for Brazeau, his grantees have accepted it, and demanded the patent issued for it in 1855. This Court held that survey of 1852 to be *conclusive* on all Courts, of the location of the land, in *West vs. Cochran*, 17 How. 413–17, on this same title; and in *Magwire vs. Tyler et al.*, 1 Black, 198–9, this Court held that the land confirmed to Brazeau was "*at the foot of "the mound*," "*that the Board of Commissioners, acting on "Brazeau's concession of* 1794, *confirmed to him his four by "four arpens, adjoining Labeaume's tract on the south.*" *Id.* p. 198. "*This survey was to be made conformably to the "reservation in the deed, and that reservation was at the foot "of the mound.*" *Id.* 198, 199.

This Court had decided in 1855 in this same controversy: "*That "a survey was made and patent issued in* 1852 *for the Bra- "zeau reservation at the foot of the mound, south of La- "beaume's tract*, which passed the title for that land to Brazeau "in 1852, *and that no other land could be claimed under that "confirmation.*" (*West vs. Cochran*, 17 How. 413, 415.)

This same fact is *rem adjudicatem*, by the decree of 1858 now in force between these parties, on the same title. (Rec. 268 to 272.)

After this Court had solemnly held in *West vs. Cochran*, on this same title, that Brazeau had the title to the land surveyed for him by the United States in 1852, at the mound south of Labeaume's

patent, the grantees of Brazeau demanded the patent in 1855, and asserted the validity of the survey under the authority of this Court, in suits for the Brazeau reservation, claimed by them under the Brazeau survey and patent of 1852, in the Courts of Missouri; and they recovered on the Brazeau title the land south of Labeaume's patent, "*at the foot of the mound*," under the authority of *West vs. Cochran*, 17 How.

This Court now holds (8 Wall. 671) that a new survey of 1862 for Brazeau, on the same confirmation, is conclusive also for other land within Labeaume's patent of 1852. Two different conclusive surveys for two different tracts of land cannot exist as conclusive surveys and pass title under the same confirmation of 1810 to Brazeau.

Only *one title* can pass to Brazeau's legal representatives, under his confirmation.

This Court held, in 1855 and in 1862, that Labeaume had the absolute legal title to the land sued for; that Brazeau had the absolute legal title to the land south of Labeaume's patent, and that Brazeau had no equity claim or title to any part of the land within Labeaume's patent.

In 8 Wall. 671, on the same title, this Court holds precisely the opposite, notwithstanding the pleadings admitted the legal title to be in Labeaume, and the Court had no jurisdiction over the questions of fact and location. But if the Court were right in 8 Wall. 671: if the Court can divest titles not in issue in the pleadings; if the Court have judicial power to try a case not in issue, to reverse its own decisions in real property cases after the lapse of a period of time sufficient to perfect the title under the Statute of Limitations; to try a suit in equity on writ of error to a State court, as an action of trespass in ejectment, and pass on questions of fact when the defendants are entitled to a trial by jury under the Constitution, still the grantors of plaintiff have ESTOPPED *themselves* from claiming this land sued for, by accepting the survey of 1852 for Brazeau and his legal representatives for 16 arpens of land south of Labeaume's survey and patent. Therefore, the opinions of this Court, as to the legal title of Brazeau's reservation, whether the seizin is *in nubibus* or by a *scintilla juris*, will not prevent the plaintiff from being *estopped*, from claiming any other land, under the Brazean confirmation, at any other place

than where it was located by the United States survey south of Labeaume's patent in 1852.

Magwire claims under Chouteau and Brazeau, through the Marine Railway Company, who granted the land sued for to Magwire, under a champertous agreement to give him three-fourths of the land within Labeaume's patent, if he could recover it and pay his own costs. (Rec. p. 242.)

The grantees of the Marine Railway Company, Ann Biddle's trustee and others, have accepted the land south of Labeaume's patent, under the survey and patent to Brazeau of 1852, in satisfaction of the Brazeau confirmation of 1810; they demanded the patent in 1855, after this Court had held in *West vs. Cochran*, 17 How., they were the owners of the land, and they now hold the land in possession by force thereof, and have no other valid title.

This is a conclusive estoppel at law and in equity. The plaintiff and his grantors cannot claim the land in both surveys for Brazeau.

Two patents have issued to Brazeau on one confirmation of 1810 for *four arpens* of land. Each patent covers sixteen arpens and accretions; one of 1852 for sixteen arpens south of Labeaume's southern stockade enclosure, and the other of 1862 for sixteen arpens within Labeaume's stockade enclosure and the bounds of his inhabitation in Spanish times.

One of these patents must be a nullity; the older one has been held valid by this Court in 1855 and 1862, and if this be so, the younger patent is void.

The plaintiff's petition avers, under the oath of plaintiff, that Labeaume has the legal title, and plaintiff admits in his brief of January, 1872, that Brazeau has not the legal title.

The true legal title of Brazeau is for the land south of Labeaume's patent, and defendants admit this in their answer. The grantees of the Railway Company now hold the land south of Labeaume's patent, under Brazeau's patent of 1852, which they accepted, so as to estop plaintiff and all other grantees of the Railway Company from claiming the land now sued for within Labeaume's patent. (Hill's Brief, October, 1869, pp. 49 to 51, and cases cited.)

No Court will ever permit the plaintiff and his champertous grantors to hold the land covered by both patents, under one confirmation for four arpens.

The representatives of Brazeau must *choose* or *elect* which patent they will hold under, as the law forbids them from holding under *both*.

They have *elected* to hold under the old patent of 1852, are now holding under it, have sued and recovered on said old patent, which has been adjudged *valid* by this Conrt in 1854 and 1862, and by the Supreme Court of Missouri, in *Picot, Trustee of Ann Biddle, vs. Bogy et al.*, 26 Mo. 422. (*Magwire vs. Vice*, 20 Mo. 494; *Magwire vs. Tyler et al.*, 25 and 30 Mo; Rec. 305; *id.* 47 Mo.)

The chain of title of plaintiff is:

First. The verbal sale of Brazeau to Chouteau in 1798 of this reservation, first stated in deed of Brazeau to Labeaume of 1798, and the confirmation of it in 1810, according to the reservation in said deed, to be measured from the foot of the mound.

Second. Deed from Brazeau to Chouteau of the reservation at the foot of the mound, on 29th July, 1816, reciting the old verbal sale. (Rec. 39, 40.)

Third. Deed from Chouteau to Strother of 1st June, 1826, for the reservation as acquired of Brazeau. (Rec. 41.)

Fourth. Deed from Strother to the Marine Railway Company's trustees for the reservation as acquired of Chouteau. (Rec. 42.)

Fifth. Deeds of the Marine Railway Company to Ann Biddle, Peter Lindell, and John Mullanphy's representatives on 5th November, 1841, for all the lands in Brazeau's reservation as then located south of Labeaume's ditch. (Rec. 159 to 167.)

Sixth. Decree of Supreme Court of Missouri vesting the title in the trustee of Ann Biddle for the land south of Labeaume's ditch, in a suit in equity, wherein the Court decrees between the grantee of Magwire and of Chouteau; L. V. Bogy *et al.*, and the grantees of the Marine Railway Company, that the title is vested in the grantees of the Marine Railway Company as the owners of the Brazeau reservation, south of the ditch at the foot of the mound. (*Picot, Trustee of Ann Biddle, vs. Bogy et al.*, 26 Mo. 422.)

Seventh. Deed of Marine Railway Company to John Magwire, of the same reservation, north of the ditch of Labeaume, January 2d, 185. (Rec. 46.)

Eighth. A champertous agreement of Magwire with said Marine Railway Company, that he would prosecute suits at his own expense, for the recovery of said land, for three-fourths thereof, dated 2d January, 1852. (Rec. 242.)

Ninth. Deed from John Magwire to Louis V. Bogy for all the Brazeau reservation wherever situate, dated 1846. (Rec. 240.)

Tenth. Deed of Bogy to Magwire, of 1846, for 4 x 4 arpens of land north of Labeaume's ditch. (Rec. 315.) Bogy thus holds Magwire's title to the Brazeau reservation south of Labeaume's ditch, and Magwire sues for it north.

Eleventh. Deed of Strother's administrator to Magwire for $315, for this reservation north of the ditch, on a sale the 4th of May, 1846. (Rec. 45.) This deed is of no validity, for Strother had sold all the land he had acquired of Chouteau to the Marine Railway Company in 1830.

It appears from the chain of title that the Marine Railway Company and its grantees were the legal representatives of Brazeau's reservation wherever it was situated. When the United States survey of 1851–2 for Brazeau was made south of the ditch, the grantees of said Railway Company accepted the survey and patent, and demanded the patent of the Recorder of Land Titles at St. Louis. (Rec. 153, 312.) These parties used the Brazeau patent in said suit of *Picot, Trustee of Ann Biddle, vs. Bogy et al.*, 26 Mo. 422; and the Court held that Mrs. Biddle, grantee of the Marine Railway Company, was the legal representative of Brazeau's reservation, and entitled to hold her lots under that patent.

But the Marine Railway Company having accepted the survey and patent for Brazeau's reservation south of the ditch, the stockholders of that Company, some of whom had accepted the said survey for Brazeau of 1852, ordered an agreement to be made with John Magwire on 2d January, 1852, stated in eighth subdivision above. (Rec. 242.)

The law is well settled, that an acceptance of an United States survey of a confirmation by the parties interested, or either of them, operates as an estoppel against the same parties claiming land under the same confirmation in another place. (*Menard's Heirs vs. Massey*, 8 How., 313; *Carondelet vs. St. Louis*, 1 Black, 179–91; *Carondelet vs. McPherson*, 20 Mo., 204–5.)

In the former case of *Magwire vs. Tyler et al.*, 30 Mo., the Supreme Court of Missouri held that the Marine Railway Company was estopped from claiming the reservation of Brazeau north of the ditch, and that in equity such claim ought not to be enforced. (Rec. 305.)

In fraud of the grantees of the Railway Company, who have bought the land south of the ditch, the Company and Magwire seek to locate the reservation north of the ditch of Labeaume, so as to ruin their grantees south of the ditch. (See Opinion of Mr. Justice Scott, Rec. p. 306–7–8, one of the most learned, honest, and pure judges that ever sat upon any bench. See also opinion of same Court in *Picot vs. Page*, 26 Mo. 399, affirming the title to Brazeau's reservation *at the foot of the mound* to the grantees of the Railway Company.) It would be a fraud for the company to ruin their grantees, under the patent of 1852 to Brazeau, numbering many persons, by claiming the reservation to be north of the ditch of Labeaume.

The Railway Company and Magwire, their agent, under said champertous agreement, are acting in bad faith towards their grantees south of the ditch, by assuming that their grantees had no right to receive the patent of 1852 to Brazeau.

Magwire, the champertous agent of the Company, without any deed covering the land north of the ditch, is put forward as a counterfeit representative of Brazeau, to refuse and reject the patent of 1852, with the hope of gaining by a trick the land north of the ditch, and he has conveyed the land south of it to Bogy. (Rec. pp. 206, 270.)

The *bona fide* purchasers under the Marine Railway Company, claiming under Strother, Chouteau, and Brazeau, number a great many persons, and their titles were all acquired under the Brazeau reservation and patent "at the foot of the mound," in accordance with two solemn decisions of this Court. By the order for the judgment, and by the scope of the decision of this Court in this

case, *the titles of all these parties south* of the ditch, who claim under Brazeau's patent of 1852, were divested and destroyed, in violation of their deeds, of the judgments and decisions of the State Court for a quarter of a century, and of the decisions of this Court in 1854 and 1862, on this same title.

It is to prevent such gross injustice that this Court has always held the party accepting a survey and patent, in such a case, to be estopped from claiming the land elsewhere. The owners of the Brazeau reservation, and Magwire who claims it, are all within the letter and the spirit of the decisions referred to, and the estoppel is perfect against any claim of plaintiff under the new survey and patent of 1862, in any form of action.

Louis V. Bogy, the grantee of Magwire, is now holding portions of the Brazeau reservation south of Labeaume's ditch and patent, under the deed of Magwire to Bogy, for the Brazeau reservation. (Rec. p. 206.) Mr. Bogy also holds a title to the same reservation, under Pierre Chouteau's grantee, A. P. Chouteau. The estoppel is therefore conclusive against Magwire on all points.

Twenty-first. The ESTOPPEL of the U. S. Survey of 1852, for BRAZEAU, is CONCLUSIVE AGAINST BRAZEAU'S GRANTEES, WITHOUT ANY FORMAL ACCEPTANCE OF IT BY THEM.

The survey for Brazeau of 1852 was made under the confirming act of 3d March, 1807, § 6, U. S. Stat. at Large, p. 441, which commands the survey to be made and the patent to issue for the land described in the certificate of confirmation.

This Court held, in *West vs. Cochran*, 17 How., 413–17, "That a survey was made and patent issued in 1852 for the Bra-" zeau reservation 'at the foot of the mound,' south of Labeaume's "tract, *which passed the title for that land to Brazeau in* "1852, *and that no other land could be claimed under that* "*confirmation*."

In *Magwire vs. Tyler et al.*, 1 Black, 198–9, this Court, on a bill in equity between these same parties, for the same land, held that the Board of Commissioners, acting on Brazeau's concession of 1794, "*confirmed to him his* 4 x 4 *arpens, adjoining La-*" *beaume's tract on the south,* (*id.* 198) * * * "*and that* "*Brazeau's tract of* 16 *arpens should be surveyed agreeably*

"*to a reserve made in a sale from Joseph Brazeau to Louis* "*Labeaume.*" "*This survey was to be made* conformably to "the reservation *in the deed*, AND THAT RESERVATION "WAS AT THE FOOT OF THE MOUND." (*Id.* 198–9; Rec. p. 39 *a* 33.)

The new patent of 10th June, 1862, for Brazeau, was issued under a *new act* of Congress, of 2d June, 1862, p. 410, vol. 12, U. S. Stat. at Large. By this new act of Congress all claims were ordered to be surveyed "on application of the parties claim- "ing or owning the same, and at their expense," * * * * * "but nothing in the law requiring the executive officers to survey "land claimed or granted under any laws of the United States, "shall be construed either to *authorize* such officers to pass upon "the *validity of the titles* granted by or under such laws, or to "give any greater effect to the surveys made by them, than to "make such surveys *prima facie evidence of the true location* "*of the land claimed or granted*," &c.

The practice of the General Land Office, under this statute, has been to give any person a survey who desired it to be made under a confirmation, and locate the land as the claimant desired, if he paid the expenses. A claimant could buy a survey to suit him; but the judicial power to grant a *new title* by surveys under the new act were withdrawn from the Commissioner and Secretary. This terrible feature of despotism was removed by the act in express terms, and the title claimed under the new act was only *prima facie*. Magwire applied for the new survey and patent of 1862; they were granted to him as he requested, but the clerical act of issuing a patent to Brazeau did not vest any *new title* in Magwire. If it did, then plaintiff has adjudged his own case, and reversed the two great cases of *West vs. Cochran* and *Magwire vs. Tyler*, by simply obtaining a patent according to his own wishes. This would be a convenient rule for land pirates.

This Court, in the opinions of 1869, holds that Brazeau first took a *new title* in 1862, by the new patent; but the Court did not observe that the new statute of 1862 did not authorize the new patent to have any such effect; and that the Court had already vested the same title, by judicial decision in 17 How., 413, 415, as of the 25th of March, 1852 in Labeaume, under a conclusive survey and patent.

The demonstration is therefore perfect, that Magwire is estopped by the Brazeau survey and patent of 1852, and that "no other land could be claimed under that confirmation." (17 How., 413, 1854.)

The new survey of 1862 is for *other land* within Labeaume's patent, but it is not conclusive; it is only *prima facie*, and the Court has held that Labeaume's survey and patent for the land sued for vested title in defendants, (17 How., 413, 1 Black, 198–9. 1861), and that they are conclusive evidence of title in the defendants.

Twenty-second. The PLAINTIFF is ESTOPPED by THE BOUNDARY STOCKADE LINE of LABEAUME of 1798, which continued from 1798 to 1826, as the recognized boundary line between Chouteau, the owner of the Brazeau reservation, on the south, and Labeaume, the owner of the land in Soulard survey, on the north. (Read my Brief of October, 1869, annexed pp. 16 to 21.)

Twenty-third. THE PLAINTIFF IS ESTOPPED BY THE ESTOPPEL OF RECORD CONCLUDING ALL PARTIES AND PRIVIES BY A FORMER DECREE of 1858. Rec. 268 to 272. (Read my said Brief of October, 1869, pp. 12 to 16, and my Brief of March, 1867, pp. 22 to 25.)

Twenty-fourth. THE PLAINTIFF HAS NO DERIVATIVE TITLE FROM BRAZEAU, if any title vested for the first time in Brazeau on the 10th of June, 1862, under the new patent. (Read my Brief of October, 1869, pp. 29 to 35, annexed.)

Twenty-fifth. THE DEFENDANTS' GRANTORS WERE INNOCENT PURCHASERS OF THIS LAND IN 1816, WITHOUT ANY NOTICE OF ANY EQUITY OR CLAIM OF BRAZEAU. (Read my Brief of October, 1869, pp. 25 to 29.)

The demonstration is believed to be perfect in the old Brief; but it may be added that Brazeau made a deed for this reservation to Pr. Chouteau, plaintiff's grantor, in July 1816, (Rec. 39 *a* 33), and must have known the purchase of the Labeaume plantation in April, 1816, by Chambers, Christy and Wright, and the formidable enclosures of Labeaume. In Brazeau's deed to Chouteau he asserts three times that his reservation is at the foot of the mound, and

declares that Lebeaume accepted the deed for the 16 arpents front sold to him by Brazeau in 1798, under the terms and conditions therein mentioned, all of which appears by said deed. This is a plain statement, in substance, that Labeaume was in possession of his own land, as fenced by his stockade, and Brazeau describes in the deed the reservation as lying at the mound and necessarily south of Labeaume's stockade. This is the only deed ever made by Brazeau for this land called the reservation, and it does not cover any part of the land sued for; so plaintiff can have no title to this land under Brazeau, and Brazeau admits by the deed of 1816 that Labeaume was in his proper place under the deed of 1798; so that the purchasers under Labeaume may have made inquiry of Chouteau as to the title of Labeaume, which resulted in Chouteau perfecting his own title under Brazeau for the land south of Labeaume. It is very difficult to conceive under the circumstances that Chambers, Christy and Wright were not innocent purchasers.

Twenty-sixth. THERE IS NO EQUITY IN THE PLAINTIFF'S PETITION TO DIVEST THE LEGAL TITLE AFFIRMED BY HIM TO BE VESTED IN LABEAUME BY THE PATENT OF 1852. (Read pp. 21 to 25 of my Brief of October, 1869, annexed.) I refer also to the case of *Dent vs. Emminger*, 14 Wall. Not reported.

Twenty-seventh. THE LAPSE OF TIME IS A COMPLETE BAR TO ALL EQUITIES, TRUSTS AND TITLES CLAIMED BY PLAINTIFF IN THIS CASE, if any SUCH equity COULD EXIST AFTER the FINAL DECREE IN PRECISELY THE SAME CASE IN 1858, STILL IN FORCE.

Read my Brief of October, 1869, pp. 35 to 37, annexed.

Twenty-eighth. THE STATUTE OF LIMITATIONS BARS ALL SUITS AT LAW AND IN EQUITY BY PLAINTIFF, *because the plaintiff admits in his sworn petition in this case, that Labeaume acquired the legal title by patent of the United States, on 25th March*, 1852, *and this Court held in* 1854, *that the legal title had passed to Labeaume in* 1852, *by the patent, more than ten years before this suit was brought.* Read my Brief of Oct. 1869, pp. 37 to 47, and the authorities cited.

Twenty-ninth. The opinions of this Court in 1869, gives the saving clause in Labeaume's patent of 1852 such an effect as to permit Brazeau's patent of 1862 to vest a legal title in Brazeau.

If this were so, against all the decisions on the Peoria lots, in the Ballance and Forsyth cases, yet the Brazeau patent of 1862 contains the same saving clause as Labeaume's patent, and this Court held in 1854 (17 How. 413 to 417) that the legal title from the United States vested in Labeaume in 1852, and the two titles would necessarily be determined at law, and the limitations would be a complete defence. See cases cited on pp. 40, 41 and 43, of my Brief of 1869, annexed.

Additional cases as to the effect of the Labeaume patent to pass the fee out of the United States.

The patent to Labeaume passed the fee out of the United States and vested it in Labeaume. *Bagnall vs. Broderick*, 13 Pet. 436.

The description in the patent is conclusive evidence of what land passes by it. *Mann vs. Wilson*, 23 How. 458.

An invalid patent; subject to the valid rights of all persons claiming under the act of 3d March, 1823, as French settlers, who had the better title; confers a fee from the U. S. to the patentee, notwithstanding the reservation, so as to make the defence of limitations good to bar the action on a junior patent giving the best title. *Peoria Cases*, 13 How. 18; 19 *id.* 434; 24 *id.* 183; 1 Black, 150; 24 How. 175; 2 Black, 571.

Additional cases as to the effect of Soulard's survey in 1799.

His survey is presumed to be correct, and to be in accordance with the order of survey. *Villabos vs. The U.S.*, 10 How. 565; *The United States vs. Hanson*, 16 Pet. 200.

If a survey is made by the proper Spanish officer prior to the transfer of the country to the United States, and is not in accordance with the grant, the survey will be considered as evidence of the changed intention of the authority making the grant, and will control it and be taken as a part and parcel thereof. *Menard's Heirs vs. Massey*, 8 How. pp. 312, 313.

A patent issued on a Spanish survey and claim of title that had been confirmed by the old Board, pursuant to an act of Congress,

like this of Labeaume's, is *conclusive* evidence that the grantee was the lawful owner of the title thus confirmed, and that he had the best Spanish title to that tract of land. *Landes vs. Brant*, 10 How. 348, *in point direct.*

Thirtieth. LABEAUME HAD THE OLDER and only INCEPTIVE EQUITY AND CLAIM UNDER THE SPANISH LAWS AND ORDINANCES FOR THE LAND EMBRACED IN SOULARD'S SURVEY of 1799. The United States assumed by the treaty of 1803 the obligations of a sovereign to perfect the inchoate titles and claims of parties according to such laws and ordinances, and the confirming acts of 1805 and 1807 (1 Vol. Pub. Land Laws, &c., p. 122, Secs. 1, 2, 4; p. 138, secs. 1, 2, 4, 5, 6, 7.) were passed to discharge and fulfill that obligation and no other.

By the ordinances of O'Reilly, of 1770, and of Morales, in 1799, Governors-General of Orleans and Louisiana (Secs. 12 and 15 (1 Vol. Laws, &c., of 1827, p. 979, 983), it was required that all grants should be surveyed by an official surveyor before a grant could be made. No official Spanish survey, nor even a private survey, of Brazeau's grant was ever made. The Lieutenant-Governor Trudeau had no power to grant any lands. (Vol. 1, Laws, &c., 1770, 1799, p. 979, Sec. 12, 983, Sec. 15) This power was expressly reserved to the Governor-General at New Orleans. In distant provinces like Upper Louisiana, embracing Arkansas, Illinois, Missouri, &c., grants could only be obtained by procuring a survey and plat of the lands to be granted, executed by the official Spanish surveyor, and certified by him, which would serve to procure the formal title from the Governor-General at New Orleans.

At the change of flags in 1804, when possession of Orleans and Louisiana was delivered to the United States, there were only four subsisting Spanish surveys existing on the bank of the Mississippi between the north wall of the fortifications of St. Louis and Rocky Creek. They were: Antoine Roy's, of 1797; Louis Labeaume's, of 1799; Hyacinth Egliz, of 1802, and Pierre Chouteau's, of 1803. Esther and Brazeau had no surveys. Esther's grant, illegal under the ordinances of Count O'Reilly, had been annulled for cause, in 1797 and 1799, by the Lieutenant-Governor at St. Louis. (*Rec. pp.* 111, 237, 295.) Brazeau had sold to Labeaume 4 x

16 arpens of his illegal, unsurveyed grant, and had reserved 4 x 4 arpens for Chouteau "*at the foot of the mound.*" Labeaume had enclosed his 4 x 16 arpens in 1798, and procured a Spanish survey of 16 arpens front by 20 arpens in depth, and an angle of 42 arpens in the northeast corner in 1799. Mr. Chouteau, who had bought Brazeau's void, unsurveyed, inceptive settlement right to the extent of 4 x 4 arpens at *the foot of the mound*, south of Labeaume's Spanish survey, procured a Spanish survey of all the land between Roy's survey and Labeaume's survey, *including* the small parcel of Brazeau. Chouteau, Brazeau, Labeaume and Roy were present at the various surveys so made by official authority, and under the Spanish law then in force Brazeau had no claim, settlement right, equity or pretense to any land within the Spanish surveys of Chouteau or of Labeaume. No title, equity, claim or pretense existed under the Spanish laws or ordinances in favor of granting any land to Brazeau or Esther, within the limits of the Spanish surveys of Roy, Chouteau or Labeaume. The Spanish survey for Labeaume, which was registered in April, 1799, extinguished all claims of Brazeau to all parts of his illegal concession within that survey, without any regard to his illegal concession or to his deed to Labeaume of 1798. (See map annexed.) So also Chouteau's Spanish survey of 1803 extinguished all pretense of claim by Brazeau and Esther to the extent of that survey, without any deed from the parties to Chouteau. As the Esther and Brazeau grants were not authorized by the Spanish law, the Spanish surveys for other grantees operated to annul them. Chouteau and Labeaume, however, bought out all the pretensions of Esther and Brazeau, but their titles under the Spanish laws and ordinances, as well as under the laws of the United States, were vested after the confirmations, in accordance with the original Spanish surveys, except in so far as Chouteau voluntarily surrendered a portion of his land on the west, which interfered with the old lots of the common field, that had been abandoned many years before on account of Indian massacres, and accepted an U. S. survey in 1826, leaving above his north line the Brazean reservation, lying between him and Labeaume's stockade.

If the Spanish or French authorities had continued in possession of these territories, the grants to Roy, Chouteau and Labeaume would have been perfected in strict accordance with the Spanish

surveys as executed by the official Spanish surveyor, and all the invalid pretensions of Esther and Brazeau would never have been asserted, but if they had been they would have been annulled at once, as wholly worthless and invalid. The acts of 1805 and 1807, and the instructions of Mr. Gallatin, prove that the confirmations were to be made strictly in accordance with the Spanish laws and ordinances, excepting only settlement rights of persons for ten years, or those actually in the possession of lands on the 1st of October, 1800, and on the 20th of December, 1803. It is not pretended that Brazeau or Esther had any possession of the vague grants to them on that day, so as to bring them within said acts of Congress; but Labeaume and Chouteau did *inhabit and possess* the lands in 1800 and 1803, as required by law.

Brazeau had, therefore, no right, claim, or equity to any land under the Spanish ordinances; and he had no pretensions to any land under the said acts of Congress. The Spanish surveys for Labeaume and Chouteau annulled Brazeau's grant.

Labeaume's Spanish claim was capable of perfection under the laws and ordinances of Spain; and the Soulard survey for Labeaume in 1799 was the incipient title-paper under which the Governor General at New Orleans was required to make the grant complete.

This Labeaume grant would have been completed under the Spanish laws and ordinances, according to Soulard's survey of 1799, but for the transfer of the territory to the United States in 1803.

The treaty required the United States to protect this property of Labeaume, and this was a political obligation requiring the United States to protect it, by completing the title under laws of the United States, passed for that purpose, so as to fulfill and perform the acts of sovereignty remaining unfulfilled and unperformed by the Spanish government.

The United States has fulfilled this obligation of sovereignty, and has perfected the title of Labeaume, in strict conformity with the laws and ordinances of the Spanish government, by confirming Labeaume's claim according to Soulard's survey of 1799.

The President has issued a patent on a survey of the United States, retracing the Soulard survey, and this Court, the ultimate judicial tribunal of the Federal Government, has held the survey

and patent to be *conclusive*, because the title has passed according to law and the treaty.

Read case of *Beard vs. Federy*, 3 Wallace, 491, 492, 493, unanimous decision. So also *Grisac vs. McDowell*, 6 Wallace. 380; *Stark vs. Storrs*, 6 Wallace, 417, 418; *Dredge vs. Forsyth*, 2 Black, 569; *Carroll vs. Safford*, 3 How., 462; *West vs. Cochran*, 17 How., 413 to 417.

The honor and faith of the Republic, under the treaty of 1803, is pledged to maintain the title of Labeaume according to Soulard's survey of 1799, and the United States patent of 1852, retracing that Spanish muniment of title. The well-considered cases of *West vs. Cochran* and *Magwire vs. Tyler*, 1 Black, have so far maintained the honor and good faith of the federal government.

RESUME.

1st. The Soulard survey of 1799 gave a better Spanish title to Labeaume than the grant of 1794 to Brazeau.

2d. The Soulard survey for Chouteau in 1803 gave him a better Spanish title than the said grant to Brazeau.

3d. The two surveys annulled both Brazeau and Esther's inchoate grants, under the Spanish laws and ordinances.

4th. The deeds of 1798 to Labeaume, and of 1816 to Chouteau, prove that Brazeau had sold all his Spanish claim, whatever it was, in 1798, and that Labeaume and Chouteau took possession of their respective tracts of land on opposite sides of a formidable stockade on the south line of Labeaume's land, and held possession by that line for more than twenty-six years.

5th. The confirmation to Labeaume was for his inhabitation and cultivation in 1800 and 1803, within his stockades.

6th. The confirmation to Brazeau was for the land south of Labeaume's inhabitation, where he had had a lime kiln. This confirmation was an error, but Mr. Chouteau, in 1826, accepted a patent for less land than his Spanish survey covered, so as to leave the Brazeau reservation which he owned to be located south of Labeaume's stockade.

7th. The confirmation to Labeaume was surveyed according to Soulard's survey, and the confirmation to Brazeau was surveyed according to the deed to P. Chouteau for the reservation south of Labeaume, and patented to Brazeau for Chouteau.

8th. The grantees of Chouteau now hold the land patented to Brazeau in 1852, and the grantees of Labeaume now hold the land patented to them, and have possessed as grantor and grantees since 1798.

9th. This Court has held these respective titles to be valid in 1854 and 1861, according to the patents of 1852.

10th. All the equities claimed in this case have been adjudged in the same case, in effect, in 1858, by a decree now in force.

11th. The Court has erred in the opinions in this case, as reported in 8 Wall., 660–72, both as to the law and the facts, the issues and the nature of the suit.

12th. The remanding of the cause by this Court to the Supreme Court of Missouri, has resulted in another decree dismissing plaintiff's petition, and this Court has no power to reverse the decree; but an opportunity is offered, and will no doubt be accepted by the Court, to review and explain the errors of fact in the opinions of 1869, now admitted to be errors by plaintiff's counsel.

13th. The equity practice in Missouri does not admit the trial of a legal title, or the possession of land, or the finding of damages in equity causes.

As to the equity practice in Missouri, see *Richer vs. Rounch*, 2 Mo., 95; *State ex rel. Allen vs. St. Louis Circuit Court*, 41 Mo., 576; *Rutherford vs. Williams*, 42 Mo., 18; *Peyton vs. Rose*, 41 Mo., 257; *Curd vs. Lackland*, 43 Mo., 139; *Young vs. Coleman*, 43 Mo., 179; *Wynn vs. Cory*, 43 Mo., 301.

The grounds for dismissing the plaintiff's bill in this case, for want of equity, are not new.

14th. This cause has been adjudged in law and in equity by this Court and the State Court, on all the questions material to the controversy.

15th. The plaintiff is barred by the following estoppels: Mutual possession by boundary line of stockade 26 years; acceptance of patent by Chouteau in 1826, and demand of title under Brazeau's reservation at the mound, and south of Labeaume's stockade, for the land lying north of his own patent; acceptance of patent and survey of 1852 for Brazeau, by Chouteau's grantees, in 1855, and demand for same; and *estoppel by the record* of the decree of 1858.

16th. The solemn decisions of this Court on the merits of this same title at law and in equity, are invoked as a rule of property, under the rule of *stare decisis*, as stated by Ram on Legal Judgment.

17th. If the Court desires to hear an argument on the question of the location of Brazeau's reservation in the face of the cases of *West vs. Cochran*, the decree of the St. Louis Land Court on a special finding of the facts, and the decree of this Court in *Magwire vs. Tyler et al.*, for defendants, I will print an argument and demonstration, illustrated with plats and diagrams, and will argue the question at large before the Court, or submit it on the printed argument.

I refer to my Brief of March 16th, 1867, which was filed in January, 1869, in the Court. It contains an analysis in parallel columns of the bill and answer, a full statement of the precise facts as to location, and many points and authorities.

In CONCLUSION, I CALL the attention of the Court to the direct conflict ON ALL THE MATERIAL QUESTIONS of law and of equity and of fact, between the solemn, well considered and unanimous decisions of this high tribunal, made on this same title in 1854, in *West vs. Cochran*, 17 How. 413 to 417, and in 1861 in *Magwire vs. Tyler*, 1 Black, 198–9; and the opinions of this Court in April and November, 1869. I print the language of the old decisions and the new opinions *on the material questions of*

law, of equity and of fact, in parallel columns, so that the Court may see in juxtaposition the conflict of authority on the same questions in this Court.

OPINIONS OF THIS COURT IN 8 WALLACE, *p.* 662 TO 674.

"That the deed from the donee of the tract (Brazeau) to Louis Labeaume, did not convey the 4 x 4 arpents now in controversy, but that the title to the same, as acquired under the concession, still remained in the donee of the tract, by virtue of the reservation contained in the deed." 8 Wall. 670, § 5. *Contra*, 17 How. 409, 412.

"That the land reserved (by Brazeau) is bounded on the south by the concession to the mulatto woman, and north by the south line of the 'sixteen arpents in depth' conveyed by the deed, *and lies north of the ditch*" (of Labeaume). 8 Wall. 671, § 14.

"That the survey made by the Spanish surveyor did not have the effect to impair the incomplete title of the donee (Brazeau), nor to convey, assign, or transfer any interest whatever in the tract of 4x4 arpens to the grantee in that deed." 8 Wall. 671, § 6.

"That the tract of 4x4 arpens was confirmed to the donee by the decree of the Commissioners of September 10, 1810, and that the same was never confirmed to Louis Labeaume." 8 Wall. 671, § 7.

OPINIONS OF THIS COURT IN 17 HOW, 413-17, AND 1 BLACK, 198-9.

"In 1798, Brazeau sold and conveyed to Labeaume part of his concession. The deed includes four arpents, 'to be taken from *the foot of the hill or mound commonly called the Grange de Terre*, by 20 arpents in depth, bounded by the Rocky Branch on the extremity opposite the said mound, reserving to myself, (says Brazeau's deed,) four arpents of land, to be taken *at the foot of said mound*, in the southern part of the aforesaid tract; selling only sixteen arpents in depth to the said Labeaume.'" 1 Black, 198, 2d pargh.

"The Board ordered * * that Brazeau's tract of 16 arpens 'should be surveyed agreeably to a reserve made in a sale from Jos. Brazeau to Louis Labeaume; this survey was to be made conformably to the reservation in the deed, and that reservation was *at the foot of the mound.*'" 1 Black, 198-9. 17 How. 409-10.

"In 1799, Labeaume got his tract enlarged by an additional concession, including the sixteen arpents front purchased from Brazeau. This latter concession was surveyed by Soulard, the proper Spanish surveyor, in 1799, and the survey was recorded. In 1810, the Board of Commissioners confirmed the grant to Labeaume, *according to Soulard's survey*. This being the effect of the confirmation, at the same time that the Board confirmed Labeaume's claim, including the 16 arpens front, the claim of Brazeau was also confirmed, and a survey in each case was ordered by the Board." 17 How. 412.

"That Louis Labeaume did not acquire the legal title to the tract of 4x4 arpens under the patent granted to him, as the saving clause in the same reserved any valid adverse right which may exist to any part of the tract." 8 Wall. 671, § 9. *The plaintiff's petition avers he did acquire* the legal *title* by the *patent*, and plaintiff's counsel admit it.

"That Joseph Brazeau, by virtue of that survey and the patent granted to him, June 10th, 1862, acquired the legal title to the tract of four by four arpents, notwithstanding the saving clause in the patent, as he was the rightful owner of the incomplete title to the same, as acquired by the concession granted under Spanish rule." 8 Wall. 671, § 12. Plaintiff's petition admits he did not acquire the legal title, and plaintiff's counsel admits that he did not, and that it was not in issue in the case. Glover's Brief, January 7, 1872.

"That the legal title to the tract of 4x4 arpens remained in the United States until June 10th, 1862, when the patent was granted to the donee of the incomplete title under the former sovereign." 8 Wall., 672, § 15. *Admitted* by *plaintiff* the *legal title was in Labeaume, in petition and Glover's Brief.*

"That the title of the donee (Brazeau) before he obtained his patent (of 1862) was incomplete and attached to no land, and could not be converted into a complete title except by legal survey and by a patent, as required by law—because it stood as

"Owing partly to a contest between the parties in this cause, before the Department of Public Lands, the surveys were not executed and finally settled so that patents could be issued thereon, till the 26th of February, 1852; and the patents for both tracts were issued on the 16th of March following: that to Labeaume, or his legal representatives, *embracing the land in Soulard's survey;* and the survey and patent made for Joseph Brazeau, or his *legal representatives*, are located on the southern boundary of Labeaume's tract." 17 How. 412.

"We are of the opinion that the United States reserved the power to locate, by survey, the land confirmed to Brazeau, and by such survey to separate it from the public lands, *and from the lands claimed by others*, and to issue a patent therefor, as was done in this instance; that this reserved power was vested in the Executive Department, whose acts in this instance *bound* Brazeau and those claiming under him; nor can they extend their claim *and recover land beyond the boundaries described in the patent to Brazeau* or his *legal representatives*." 17 How. 413, 415–16.

"In 1799 Labeaume applied to the Governor and got his tract of 4x16 arpents enlarged, including the land conveyed to him by Brazeau, extending north to the Rocky Branch, calling for 20 arpents in depth. *This enlarged tract the Governor ordered Soulard to survey for Labeaume*, and to put him into possession; which the surveyor did in April, 1799." 1 Black, 198, 3d pargh.

"Labeaume applied to have his claim confirmed by the Board of Commissioners, and in 1810 it was confirmed for 356 arpents; and at the same time, acting on Brazeau's concession of 1794, the Board *confirmed to him* his 4x4 arpents, *adjoining La-*

it existed in 1810, when the board of commissioners confirmed it as valid." *Id.* 672, § 16.

"That the title of the donee, as perfected by the last survey and patent, is wholly unaffected by the judgment of this Court in the case of *Magwire vs. Tyler*, 1 Black, as this Court in that case had no jurisdiction of the merits, and did not decide any question, except that the action of the Secretary of the Interior, in setting aside the survey therein described, was a rightful exercise of authority." *Id.* 672, § 17.

beaume's tract on the south." *Id.* 198, 4th pargh.

"In 1810, the Board of Commissioners confirmed the grant to Labeaume, *according to Soulard's survey*" (of 1799). 17 How. 412.

"The Board ordered that Labeaume's concession should be surveyed in conformity to the order of survey made by the Lieut.-Governor; and that Brazeau's tract of 16 arpents 'should be surveyed agreeably to a reserve made in a sale from Jos. Brazeau to Louis Labeaume.' This survey was to be made conformably to the reservation in the deed, and that reservation was *at the foot of the mound.*" 1 Black, *Magwire vs. Tyler*, 198-9.

The case of *Magwire vs. Tyler et al.*, 1 Black, 198, was on writ of error from the State Court, on the decree of 1858 in the St. Louis Land Court, affirmed in 1859 by the State Supreme Court, and the decree was affirmed by this Court on the merits, in these words: *Decree of the Supreme Court of Missouri affirmed. Id.* p. 203. The opinions of 1869 deny that the affirmance of the decree of the St. Louis Land Court of 1858, and of the Supreme Court of Missouri of 1859, by this Court in 1862, was on the merits. The case was decided on its merits, and affirmed the decree rendered upon a special finding of facts upon all the material issues in that case, which are a part of the decree and judgment therein, and conclude all parties as part of the record. Those facts in the decree of 1858 are estoppels of record in this court and in the State Courts, against the assertion of and the validity of all the statements in the opinions of 1869, at variance with the said record.

This Court has no lawful judicial power to affect or contradict the facts established by the affirmance of the decree in *Magwire vs. Tyler et al.*, 1 Black. That case is conclusive of this one now before the Court, on every averment in plaintiff's petition.

The case of *West vs. Cochran*, 17 How., is a decision that Labeaume had the legal title to all the land in Soulard's survey and in Labeaume's patent, which are identical; and that Brazeau

had the legal title to the land south of Labeaume and patented to Brazeau in 1852. The plaintiff admits that Labeaume had the legal title to the land sued for by force of his patent and confirmation, and under the pleadings this fact cannot be controverted in any court.

The judicial powers of this Court, or of any other court of record, original or appellate, cannot be extended to the trial of any question not in issue in the pleadings; nor can this Court pass upon a question in conflict with the admissions of the parties in the pleadings. Under these well settled rules for the trial of cases at law, or the hearing of causes in equity, the opinions of 1869 are *coram non judice* as to all matters not in issue or in conflict with the admissions of the parties in the pleadings; and as to all the issues made on the plaintiff's petition, upon the facts stated to divest Labeaume's legal title under the patent of 1852, the former decree of 1858, affirmed by the State Supreme Court and by this Court, is *res adjudica*, a conclusive estoppel of record.

The opinions of the Court in 1869 should therefore be withdrawn, and the former decree of 1858 should be respected; supported as it is, on the question of legal title, by the great case of *West vs. Cochran*, 17 Howard, on this same title; under the rule of *stare decisis*.

The stability of titles, under the old judgment and decree, held by many purchasers on the faith they had in the permanency of the judicial decisions of this Court; and a proper judicial respect for the validity and conclusiveness of the decisions of the Court in real property causes where titles have become vested thereunder, should induce the Honorable Justices of the Court to overthrow, explain and disapprove the erroneous opinions of 1869, delivered on the first writ of error in this case, to the end that the previous well-considered and masterly opinions of the Court on this title may be re-established and held binding forever.

BRITTON A. HILL,
Of Counsel for Defendants in Error.

St. Louis, December 2, 1872.

Supreme Court of the United States.

JOHN MAGWIRE, PLAINTIFF IN ERROR,

vs.

MARY L. TYLER AND OTHERS, DEFENDANTS IN ERROR.

ERROR TO THE SUPREME STATE COURT OF MISSOURI, UNDER THE TWENTY-FIFTH SECTION OF THE JUDICIARY ACT OF 1789.

BRIEF AND ARGUMENT OF BRITTON A. HILL, ESQ.,

FOR DEFENDANTS IN ERROR, ON MOTION TO REFORM JUDGMENT OF THE SUPREME COURT OF THE UNITED STATES.

STATEMENT OF CASE ON MOTION.

The defendants in error have filed a motion in this case to reform the order for judgment. This order is found at the close of the opinion of the Court by Mr. Justice Clifford, and is in these words: that "the judgment be reversed and the cause remanded, with directions to the Supreme Court of Missouri to affirm the decree of the St. Louis Court of Common Pleas."

Defendants state, that this order is directly in violation of the powers and jurisdiction of this Court, conferred upon it by the constitution of the United States and regulated by the judiciary act, in this, that said order excludes, overrules and determines, decisions of questions of local law, of estoppel, of limitations of bona fide purchasers, of *res adjudicata*, of equity, of derivation of title, of the location of lands covered by deeds and other defences, over which the State Courts, under the federal constitution, have exclusive, original and appellate jurisdiction, and this Court has none.

On the face of the record in this case, these questions of State local law exist and are fully set forth, with ample and in some of the defences *conclusive record evidence*, to establish eight or more complete defences to plaintiff's suit, under local law, and they are wholly independent and exclusive of all and every question or questions over which this Court has any jurisdiction on writs of error from Supreme State Courts.

It is admitted in the opinion of the Court in this case, that the defences under State law in this suit are not re-examinable in this Court, and that jurisdiction is held only on questions arising under federal laws. It is directly alleged in the said opinion, that the authority of Magwire *vs.* Tyler, 1 Black, 198, is not conclusive on the merits of this suit, because jurisdiction of the writ of error in that case was acquired under the decision of the State Court, that Brown's Survey of 1817, of two tracts in one, had been legally set aside, "and in that state of the case, *this Court could not decree anything under* the 25th section of the judiciary act, *except the question as to the power of the secretary* of the interior, *to set aside that survey.*" And this Court held in that case, that the State Court decided correctly in favor of the validity of the acts of Congress, conferring the powers exercised by the secretary over such a survey. The survey of 1817 never had any legal existence; it was never recorded, and was rejected by the recorder of land titles and not by the secretary of the interior. (Rec. 142, 3, 4, 223 to 230.) The secretary never mentioned the survey of 1817 in his decision, for it had no existence or recognition in the General Land Office, it never having been recorded. *Gamache* vs. *Piquinot.* 16 How. (Rec. 223 to 230.)

The plaintiff's petition in equity in this suit prays that the elder title of Labeaume, vested in him by patent of the 25th March, 1852, for the land sued for, may be divested out of defendants' representatives of Labeaume, and vested in plaintiff as representative of Brazeau. Two patents had been issued to Brazeau on the same confirmation, made September 22, 1810; the first one, of 25th March, 1852, for land south of Labeaume's ditch, at the foot of the big mound; the second one, of 10th June, 1862, for the land sued for, lying in the southeast corner of Labeaume's patent not "at the foot of the big mound."

The legal title of defendants being admitted in the pleadings, and expressly relied on by plaintiff to give an equity to divest it, this Court holds that the legal title was not in Labeaume but in Brazeau, by force of the junior patent of 1862 to him. This ruling is directly in conflict with plaintiff's petition, and leaves no equity to be enforced.

Plaintiff's petition sets forth five leading facts to establish his equity, so as to authorize him to invoke the aid of a Court of Chancery.

First. That Soulard's Spanish survey for Labeaume included within it Brazeau's reservation claimed by plaintiff, which was alleged to be part of an elder grant to Brazeau of 1794.

Second. That the confirmation of 1810 to Labeaume included the reservation within Soulard's survey for Labeaume, at the southeast corner thereof, it being Brazeau's land.

Third. That Brazeau's reservation is properly to be located on the ground within Labeaume's patent, by the testimony of witnesses as to the situation of boundaries and monuments, and from the location of surrounding tracts of land and surveys.

Fourth. That defendants and their grantors were not innocent purchasers of the land in Soulard's survey for Labeaume, but had notice of Brazeau's reservation being within Soulard's survey for Labeaume of 1799, and confederated with the United States officers to procure the patent to Labeaume, so as to include the reservation.

Fifth. That on the 10th June, 1862, the United States made a patent to Brazeau for sixteen arpents of land within Labeaume's elder patent, and that Labeaume's patent is a cloud upon the title, which a Court of Equity ought to remove.

THE ANSWER OF DEFENDANTS denied all the equities claimed, all the allegations concerning the supposed fraud or mistake in the location of the reservation within the Soulard survey of 1799 and United States patent for Labeaume of 1852, and set up the following INDEPENDENT DEFENCES, *having no reference to the construction of any act of Congress.* or the acts of any officer of the United States, or the vesting of any title thereunder.

First. That the boundaries of the Brazeau reservation required it to be located outside of Labeaume's patent, between the big mound and Labeaume's southern ditch, bounded east by the Mississippi River.

Second. That the plaintiff shows no equity in his bill, by virtue of the new patent to Brazeau of 1862; and as the United States had no title or equity to vest in any one, the new patent grants nothing.

Third. That plaintiff is barred from recovering the land sued for by estoppel, by boundary line established between Labeaume and Chouteau, grantee of Brazeau, in 1799, at Labeaume's south ditch and stockade, and recognized. and acquiesced in for twenty-four years by both parties, then owning and claiming the land on each side of said boundary.

Fourth. That defendants and their grantees have held continuous and notorious adverse possession of the land sued for, by enclosures and improvements, from 1798 to 1862, claiming to own the same.

Fifth. That defendants and their grantors were innocent and bona fide purchasers for full value, in April 1816, of all the land in Soulard's survey, then in Labeaume's possession, by full warranty deeds, with full covenants of title, before any United States survey was made of the confirmation to Labeaume, and without any notice of the pretended equities set up by the plaintiff in this suit, forty-six years afterward.

Sixth. That plaintiff has no derivative title to any part of the land sued for, from Brazeau; that the deed from Brazeau to Chouteau of 1816 is the only conveyance from Brazeau to plaintiff's grantor, and does not cover any part of the land sued for, but grants other land south of Labeaume's patent.

Seventh. That the reservation of Brazeau in his deed to Labeaume of 1798, even if held to be an exception, is inoperative to reserve any land other than the land described in said deed as lying at the foot of the big mound, and necessarily south of Labeaume's south ditch; and does not create any reservation within Soulard's survey for Labeaume, or within Labeaume's patent, which is for the same identical land as that contained in Soulard's survey. A fair construction of that deed fixes the reservation at the foot of the mound.

Eighth. That plaintiff was barred from asserting any equities in this case, by reason of the lapse of more than half a century after the alleged equity arose, under the supposed erroneous survey of Soulard in 1799, and the confirmation of 1810, and that the patent of 1862 to Brazeau, being a mere quitclaim of the United States, gives no new equity, but simply a relinquishment of all the interest of the United States, amounting to nothing; for by the plaintiff's bill it is admitted the title was vested in Labeaume in 1852, by prior patent for the same land.

Ninth. That a patent was issued to Brazeau in 1852, for the reservation lying between the big mound and Labeaume's south ditch, and the grantees of Brazeau accepted said patent, and hold title under it; that plaintiff has no deed for any land within the patent of 1852, and was not a legal representative of Brazeau for any part of the land known and described as the Brazeau reservation, and had no right to protest against the patent of 1852, or demand its recall.

Tenth. That it is against equity and good conscience for Brazeau's grantees to hold the land between the big mound and Labeaume's south ditch, under the patent to Brazeau of 1852, and at the same time claim the same reservation under the new patent of 1862 in another place; and it is against all equity for the grantees of Brazeau's reservation to demand the land granted by the new patent, and divest the titles of their grantees, Ann Biddle and others, under the old patent of 1852.

Eleventh. That all the equities set up in the bill of plaintiff have been adjudicated in favor of defendants, in a former suit in equity, between the same parties and privies, in regard to the same identical subject-matter, in a suit commenced the 22d August, 1855, by a bill stating the same identical facts, excepting only the new patent of 1862

on which the St. Louis Land Court, 22d June, 1858, entered a finding of all the material facts of location, possession, and other matters in the form of a special verdict, and entered a decree thereon, dismissing the plaintiff's bill, which decree was affirmed by the Supreme Court of Missouri, on the merits; and on writ of error to this Court, the same decree was affirmed on the merits by this Court, and the Brazeau reservation declared to be situate *at the foot of the big mound, south of Labeaume's ditch*; and that said decree is final and conclusive forever as to all matters of fact therein found and adjudicated, and as to all matters of law and equity therein determined or litigated.

Twelfth. That the United States, in 1862, had no interest, claim, title or equity in or to, the land sued for, lying within Labeaume's patent of 1852, that patent having been issued in conformity with the act of Congress of March 3d, 1807, by order of the Commissioner of the General Land Office, and upon a survey and patent certificate giving specific metes, bounds, courses and distances, to the entire ambit of the tract of land granted by the patent.

The record in this case shows conclusively, without any opposing facts, that the 3d, 4th, 5th, 6th, 7th, 8th, 9th and 11th defences set up in the answer as above stated were fully sustained by the evidence and testimony on the hearing of this cause; and neither one or all of said defences have any reference to federal laws or statutes, but are strictly confined to the local law of the State of Missouri.

The answer further stated that the confirmation of 1810 to Brazeau was void, because it was made in direct violation of the act of Congress of 2d March, 1805, and 3d March, 1807, prohibiting any confirmation to Brazeau, who had not filed any notice, and who did not own, or inhabit and cultivate, the land or any part thereof on the 1st of October, 1800, or 20th December, 1803, as required by the said acts.

This Court has taken jurisdiction of the writ of error sued out by the plaintiff in error to the Supreme Court of Missouri on this single point of construction of the said acts of Congress; and having thus acquired jurisdiction, which only authorized this Court to examine and decide that question under those acts, the order in the last three lines of the opinion directing the Supreme Court of Missouri to affirm the decree of the Court of Common Pleas, in effect passes upon all the said valid defences under the laws local to the State of Missouri, over which this Court has no jurisdiction, and the decision in the State Court is final and conclusive, as the decree of a Court of last resort, having exclusive, original and appellate jurisdiction in the premises.

The decree of the St. Louis Court of Common Pleas of 1865 was a

general decree on the whole bill, without any finding of specific facts, or the statement of any conclusions of law. It merely finds that out of the claim presented to the Board of Commissioners by Labeaume, the 4 by 4 arpents claimed by plaintiff was confirmed to Joseph Brazeau or his legal representatives; and the Court finds the issues in the cause for the plaintiff, and decrees the land to plaintiff, and divests the title out of defendants, and vests the same title in plaintiff, and orders an account of rents and profits, and appoints a commissioner to take an account thereof. (Rec. 29, 30.)

The commissioner brought in his report, and defendants excepted thereto, when plaintiff remitted a portion of the rents and profits, and Court overruled the exceptions, made the decree final (Rec. 324, 5), and gave judgment for rents and profits with costs (Rec. 325 to 332).

From this decree defendants took an appeal to the Supreme Court of Missouri, with a supersedeas; and this being a chancery case, the whole matter was open to review and revision on questions of law and fact, with full power in the Supreme Court to enter a decree of its own upon the pleadings and the evidence in the record, as upon a hearing in chancery *de novo*, under the laws of Missouri. *King* vs. *Moon*, 42 Mo. 551. *State et rel. Allen* vs. *St. Louis Cir. Ct.*, 41 *Mo.* 576, 7.

The Supreme Court of Missouri, on a full hearing in 1867, "doth consider and adjudge that the judgment of the St. Louis Court of Common Pleas be reversed, annulled, etc., and that this cause be dismissed," etc. (Rec. 348 to 350.)

The St. Louis Court of Common Pleas was abolished in 1866, under the new constitution; and it appears that said Court had no jurisdiction of this case under the constitution and code of 1855, so that the decree was void *ab initio*.

If the Supreme Court of Missouri had affirmed the decree of the Common Pleas, it would have been necessary for that Court to enter a decree of its own, and award execution; unless it had discovered the want of jurisdiction and pronounced the decree void for that reason.

On the motion filed by defendants to reform the order directing the Supreme Court of Missouri to affirm the decree of the Common Pleas, an argument was made before this Court in April last, when an order was entered to argue the case orally in October next, at the adjourned term.

BRIEF ON MOTION.

First. This Court having assumed jurisdiction of this case on writ of error, under 25th section of the judiciary act, on the ground that the

Supreme State Court of Missouri held the confirmation of the commissioners to Brazeau of 1810 to be void, that question or some other one, immediately respecting the validity or construction of an act of Congress of the United States, under which the said confirmation was made, and on which plaintiff's title immediately and exclusively depends, are the only questions of which this Court can take jurisdiction and render a decision, that will be binding on the Supreme Court of Missouri.

The decisions of this Court for more than half a century establish this proposition finally and conclusively.

Conkling's Treatise, 4th ed. 1 to 4; p. 12 to 19; p. 23 to 47.
Curtis' Comm. p. 274 to 391, and cases cited.

See also *Mathews* vs. *Zane*, 7 Wheaton, 164; 5 Curtis, 244. See also *Armstrong* vs. *Treasurer of Athens County*, 16 Peters, p. 281; *Crowell* vs. *Randell*, 10 Peters, 368; *Williams* vs. *Norris*, 12 Wheaton; 2 Wheaton, 363; *Harris* vs. *Dennie*, 3 Peters, 292; *Satterlee* vs. *Matthewson*, 2 Peters, 380; *Hickie* vs. *Starke*, 1 Peters, 94; *Craig* vs. *Missouri*, 4 Peters, 410; *Mills* vs. *Brown*, 16 Peters, 525; *Lawler* vs. *Walker*, 14 Howard, 149; *Neilson* vs. *Lagow*, 12 Howard, 98; *Smith* vs. *Hunter*, 7 Howard, 738; *Williams* vs. *Oliver*, 12 How., 111, 125; *Erwin* vs. *Lowry*, 7 How. 172; *Bank of Ohio* vs. *Knoop*, 16 How. 369; *Ross* vs. *Barland*, 1 Peters, 655, 664; *Ocean Ins. Co.* vs. *Polleys*, 13 Peters, 157; *Almonester* vs. *Kenton*, 9 How. 1; *Doe* vs. *The City of Mobile*, 9 How. 451; *Henderson* vs. *Tennessee*, 10 How. 311; *Wiscart* vs. *Dauchy*, 3 Dallas, 321; *Darousseau* vs. *The United States*, 6 Cranch. 307. See also, The Victory, 6 Wall. 382; Hamilton Co. *vs.* Mass. *id.* 632; *Rector* vs. *Ashley*, id. 142; *Walker* vs. *Villarago*, id. 124; *Barney* vs. *Baltimore City*, id. 280; *Grison* vs. *McDowell*, 6 Wall, 363; *Railroad Co.* vs. *Rock*, 4 Wall, 177; *Ryan* vs. *Thomas*, id. 603; *Lanfear* vs. *Hunley*, 4 Wall, 209. See also *McDonough* vs. *Millardon*, 3 How. 707; *Doe* vs. *Eslava*, 9 How. 440; *Semple* vs. *Hagar*, 4 Wall, 431; *Witherspoon* vs. *Duncan*, id. 210; *State of Minnesota* vs. *Batcheldor*, 1 Wall, 109; Bridge proprietors *vs.* Hoboken Co., id. 116; *Silliman* vs. *Hudson River Bridge Co.*, 1 Black, 582.

See also *Farmers' heirs* vs. *Mobile*, 9 How. 451; *Berthold* vs. *McDonald*, 22 How. 334; *Calcote* vs. *Stanton*, 18 How. 243; *Mackey* vs. *Dillon*, 4 How. 420; *Moreland* vs. *Page*, 20 How. 522; *Martin* vs. *Hunters' lessees*, 1 Wheat. 348, 9; *Smith* vs. *State of Md.* 6 Cranch, 286; *Kennedy's Exrs.* vs. *Hunts' lessee*, 7 How. 586; *Keene* vs. *Clark*, 10 Pet. 291; *Coon* vs. *Gallagher*, 15 Pet. 18; *Grand Gulf R. R. Co.* vs. *Marshall*, 12 How. 165; *Adams* vs. *Preston*, 22 How. 488; *Medbury* vs. *The State*

of Ohio, 24 How. 413; *Miller* vs. *Nichols*, 4 Wheat. 315; *Wilson* vs. *The Black Bird*, Creek Marsh Co., 2 Peters, 249; *Owings* vs. *Norwood's lessee*, 5 Cranch, 344; *The Pres. etc., of Coml. Bk. of Cin.* vs. *Buckingham's Exrs.* 5 How. 317; *McKinney* vs. *Carroll*, 12 Pet. 66, Curtis Comm. § 224; *Marbury* vs. *Madison*, 1 Cranch, 137, and *Maxwell* vs. *Newbold*, 18 How. 511, citing Crowell *vs.* Randall, 10 Pet. 368, as establishing the rule since adhered to.

The extent of power conferred by the Constitution on this Court over land cases is, "to all cases in law and equity, arising under . . . the laws of the United States," etc. Art. 3, § 2.

The act of Congress of 1789, § 25, authorizes this Court "to reverse or affirm a final judgment or decree in any suit, in the highest Court of law or equity of any State, where there is drawn in question a statute of the United States, and the decision of the State Court is against the title specially set up by either party under such statute; but *no other error* shall be *assigned or regarded as a ground of reversal* than such as appears on the face of the record, and *immediately respects the beforementioned questions of validity, or construction of said statutes, etc.* Conk., Treat., 4 ed. p. 23, 24; act of 1789, 1 vol., Stat. at Large, 70 to 80, § 25; Curtis' Digest, 273 to 282, and cases cited above.

Under the act of Congress of 1789, the only question to be decided in this case by this Court is, whether the confirmation to Brazeau was void or valid. If valid, then it vested the title in him on 22d September, 1810, for the four arpents of land within Soulard's survey for Labeaume. See *infra.* Stat. limitations.

Second. The foregoing authorities cited are conclusive that this Court has no jurisdiction of any case under the 25th section of the act of 1789, where the record shows that the State Court could have disposed of the case, on questions of State law, without deciding any question arising under the federal laws.

It must be clear from the facts stated in the record, by just and necessary inference, that the question under the federal laws was made, and that the State Court, in order to have arrived at the judgment pronounced by it, must have come inevitably to the decision and to have decided against the validity of a federal law or treaty, etc., *as indispensable to that judgment.* Curtis' Comm., § 224 *et seq.* See also cases above cited.

The burden of proof is on the plaintiff in error to establish that the State Court could not have decided the case in favor of the defendants in error, on questions of local State law; and if he fail to do this, from the facts stated in the record, this Court has no jurisdiction. See cases

above cited and particularly. 1 Pet. 23; 13 Pet. 447; 6 Pet. 727; 12 Pet. 435; 13 Pet. 157; 4 Wheat. 315; 3 Pet. 302; 10 Pet. 368; 12 Wheat. 117; 2 Pet. 249; 5 Cranch, 344; 5 How. 317; 12 How. 165; 16 Pet. 285; 15 Pet. 18; 12 Pet. 66.

In this case, the decree of the Common Pleas was a general one; no specific facts were found. The appeal from that inferior tribunal to the Supreme Court of Missouri operated as a *supersedeas*, and the Supreme Court heard the case *de novo* in equity, on all the proofs in the record according to the practice in that State, and reversed the decree of the Common Pleas, and entered a general decree, dismissing plaintiff's bill. No reasons are stated in the decree for the judgment of reversal, and the whole record can be appealed to by the defendants, to show their many legal and equitable defences under the laws of the State of Missouri; but the plaintiff is bound from the same record to prove, that the said general decree could not have been rendered by the State Supreme Court unless that Court had decided against the validity of the confirmation to Brazeau of 1810. See cases last above cited, 41 Mo. 586.

It is impossible for the plaintiff to prove that the decision of the State Court was made in this case on any point of federal law, from the record. The opinion of the Court can never be referred to by this Court as any part of the record of this case. The pleadings and evidence show eleven complete defences under State law, and one defence on the invalidity of the confirmation of 1810 to Brazeau; which it is claimed was decided to be void, against the validity of the confirming acts of Congress of 1805 and 1807, and to give this Court jurisdiction.

To test the question of jurisdiction in this case, it must appear that the decision of that question on Brazeau's confirmation, if it were against his title thereunder, was indispensable to the judgment of the State Supreme Court. If the confirmation to Brazeau of 1810 was valid, plaintiff was barred by limitations, by Labeaume's patent, by conflict of boundaries, by laches, by estoppel under boundaries and long possession, by former recovery, by want of notice of his equity to *bona fide* purchases for value, by want of a deed from Brazeau for the land sued for, and by want of judicial or other equity. If the confirmation to Brazeau were not valid, the same defences would still bar the plaintiff's suit, although the decision as to the invalidity of the confirmation would also bar the suit. The question as to the confirmation is therefore wholly immaterial, and it could not have affected the judgment or decision of the State Court, and this Court has no jurisdiction. See cases cited *supra*.

Third. Both parties claimed under the same confirmation; and the original question was, as to the true boundaries of the lands confirmed

to each party. This is a question of fact, to be determined by the State Court having original jurisdiction. In every case, except this unfortunate one of Madame Tyler's, this Court has uniformly held, that it had no jurisdiction over questions of boundary, between parties claiming under entries, preëmptions, confirmations or patents. *McDonough* vs. *Millandon*, 3 How. 693; *Mackey* vs. *Dillon*, 4 How. 420; *Almonester* vs. *Kenton*, 9 How. 1; *Farmer's heirs* vs. *Mobile*, *id.* 451; *Doe* vs. *Eslava*, *id.* 421; *Moreland* vs. *Page*, 20 How. 522; *Kennedy* vs. *Hunt*, 7 How. 593; *Lanfear* vs. *Hunley*, 4 Wallace, 204.

No distinction can be drawn between the cases last cited and this one. Location and boundaries are always questions of fact, depending on monuments, boundaries, courses and distances and many other facts. The whole stress of the opinion in this case is laid on the location of Brazeau within Soulard's survey for Labeaume, and within the confirmation of the United States to Labeaume on Soulard's survey. On these questions of fact, this Court has no jurisdiction, and the decision is *coram non judice*, so far as it affects the question of location.

Where a conflict arose between a French grant of 1759 and a Spanish grant of 1788, both confirmed by act of Congress of 8 May, 1822 (3 Stat. at Large, 699), for the same land, the decision of the State Court that the junior grant with possession must prevail was held by this Court to be final in *Doe* vs. *Eslava*, 9 How. 421; 3 How. 693; 9 How. 1, 9; 9 Pet. 224, 236; *Ross* vs. *Barland*, 1 Peters, 664; *Minnesota* vs. *Batchelder*, 1 Wall. 109; *Berthold* vs. *McDonald*, 22 How. 334; *Calcote* vs. *Stanton*, 18 How. 243; 3 Wheat. 246; *Ewing* vs. *Lowry*, 7 How. 172. It is a singular fact that this Court has twice held in favor of defendants' theory of location in *West* vs. *Cochran*, 17 How. 413, 15, *Magwire* vs. *Tyler*, 1 Black, 198, 9. See *Res adjudicata infra.*

Fourth. This Court has no jurisdiction in this case, to adjudicate or decide upon any question raised in the answer and supported by the evidence on points of law or equity, local to the State of Missouri, and wholly independent of the title set up by plaintiff under acts of Congress. Such defences under local laws are not re-examinable in this Court, where the jurisdiction thereof could not be assumed, and where any judgment or decision thereon would be *coram non judice.* See cases above cited, and particularly the following parallel cases. *Matthews* vs. *Zane*, 7 Wheat. 164; *Erwin* vs. *Lowry*, 7 How. 172; *Lytle* vs. *Arkansas*, 22 How. 203, 4; wherein it was considered how far this Court can re-examine the decisions of a State Court, on writ of error, under the twenty-fifth section of the judiciary act of 1789. In *Lytle* vs. *Arkansas*, 22 How. 203, 4, this Court says: "In their answers the defendants rely

on the statute of limitations. As this defence has no connection with the title of Cloyes under the entry, this Court cannot revise the decree below in this respect, under the twenty-fifth section. Other defendants relied on the fact that they were *bona fide* purchasers of the lots sued for, and the State Court so found, and with this portion of the decree we have no power to interfere." See also *Ross* vs. *Barland*, 1 Pet. 655.

In the opinion of the Court, this same doctrine is declared and applied to this case. At page 28 of the opinion, this Court says, defendants contend "that the answer presented other defences not re-examinable in this Court; and they insist that the Supreme Court of the State, for aught that appears to the contrary, may have decided the case against the plaintiff, and reversed the decree of the common pleas upon some of the defences set up in the answer, which are not re-examinable in this Court." This Court proceeds to say that federal questions are involved in the pleadings; "and if it appears that none of the other defences afford any legal answer to the suit," then the case is properly before this Court, etc.

At pages 33–4 of the opinion, the Court says, the former suit of *Magwire* vs. *Tyler*, 1 Black. 198, 9, was not decided on the merits in this Court, because it was founded on a survey by the United States of 1817, on which plaintiff claimed to maintain his suit, because it was illegally set aside; and if his view had been correct, this Court would have had jurisdiction on the merits. "But the respondents insisted that the survey had been legally set aside, and the Court so held; and in that state of the case, *this Court could not decide anything* under the 25th Section of the judiciary act, *except the question as to the powers of the Secretary of the Interior to set aside that survey.*"

If this Court could not decide or consider questions of State law in 1861, and was strictly confined then to a question of federal law, how is the present jurisdiction in the same case asserted over questions of State local law, which this Court holds now, to have been the law and practice then, and to be beyond its jurisdiction?

I understand the opinion of the Court to admit all the propositions of defendants stated in the above points, 1st, 2d and 3d, to wit: that the jurisdiction of this Court is strictly confined to questions arising under acts of Congress; that it has no jurisdiction or power to decide, or adjudicate on the validity of defences under State local laws: and yet in the same opinion it is said, that the defendants have no defence under the statute of limitations; or the former judgment and decree; or the bona fide purchase of William Chambers, of 1816, without notice of Brazeau's claim or equity.

If it be law, as settled by all the cases on jurisdiction in this Court since 1794, that the defences and decisions of State Courts under the local laws of the State are not re-examinable in this Court for want of jurisdiction under the constitution and acts of Congress, by what rule or authority does this Court in Mrs. Tyler's case examine the defences of limitations, bona fide purchasers, and *res adjudicata*, over which defences it is admitted this Court has no jurisdiction? 2 Black. 574, 589.

Seventh. The effect of the present decision is to reverse the rule long established in this Court, and throw the onus on the defendants, to show that they had valid defences under the local law of Missouri; and with the single object of meeting this new rule of decision, I present a number of valid defences in this case under State law, with the evidence in the record, and the authorities to support each defence.

It being proved by all the authorities, and admitted by the Court, that any one valid defence under the State law of Missouri will prevent the entry of the present order for judgment, and oust this Court of its jurisdiction, I call the attention of the Court to the following defences at law and in equity, under the local law of Missouri. All the rules and principles of equity set up are the same rules and principles universally acknowledged in Great Britain, and in the several States of the Union. Each one of the following defences appears to me to be conclusive of this case in favor of the defendants, but I am not able to discover how the burden of proving this is thrown on the defendants, nor how this Court can in any way examine into the validity of such defences.

RES ADJUDICATA, AND CONCLUSIVENESS OF THE EVIDENCE UPON WHICH THE DECREE OF 1858 IN THE ST. LOUIS LAND COURT WAS BASED.

(1.) The former decree of 1858 (Rec. 268 to 272) was upon a bill of which this present one is a copy, with the single exception of the patent of 1862, with the same identical alleged equities and prayers for relief. The judgment in the former suit covers all the facts in this case save the new patent aforesaid; the cause and object of both the actions in the State Court, and the petitions therein, are one and the same with the said exception, and hence the prior judgment being full and specific as to all the equities now set up bars the present suit as to all matters heretofore determined, and is conclusive record evidence of all the facts adjudged, to wit: among other facts, that the survey of Soulard does not embrace any portion of the land reserved by Brazeau

in his deed to Labeaume of May 9th, 1798; that the board of commissioners for the adjustment of land titles in 1810 confirmed to said Brazeau the 4 × 4 arpents which he had reserved to himself in his said deed to Labeaume, "to be taken at the foot of the hillock or mound in the southern part of said land;" that the said tract of 4 × 4 arpents of land, which was confirmed to said Brazeau, is situate in the northern part of the city of St. Louis, on the south side of an old ditch called and known as Labeaume's south ditch; that when Chouteau, on the 15th of October, 1799, petitioned for a tract of land between Roy and Labeaume of six arpents in width, Labeaume's ditches were made. That Chouteau in his petition called for the line of the land of Louis Labeaume for his northern boundary; that at the survey of 1803, the south ditch of Labeaume was recognized by Chouteau and all the adjoining proprietors as Labeaume's south line, and that possession was held under such recognition from said survey of 1803 till 1823; that the survey No. 3333, for Louis Labeaume, with the ensuing patent thereon of 1852, was obtained without any fraud whatever; that the survey No. 3332 for Brazeau's representatives and the ensuing patent thereon of 1852 did not embrace any land lying north of the said south ditch of Labeaume; that the conveyance by Labeaume to Chambers in 1816, through whom defendants claim title, was upon good and valuable consideration, and without any notice of the equities now set up by the plaintiff; that said Labeaume and those claiming under him have had possession of and have used, occupied and enjoyed the premises in controversy from about 1798 to the time of the commencement of this suit. In the face of this positive adjudication and positive finding the plaintiff alleges, in the present bill, precisely the same facts set up in the former suit and adjudicated, to wit:

1st. That Soulard made the survey for Labeaume in 1799, by mistake or design, to include the Brazeau reservation.

2nd. That the confirmation of 1810 to Labeaume and to Brazeau were so made as to include the 4 × 4 arpents of Brazeau within the survey of Soulard for Labeaume.

3rd. That the Brazeau reservation must be located in the Soulard survey, from the relative position and location of the surrounding tracts.

4th. That defendants and their grantors, claiming under Labeaume, are not innocent purchasers; having notice of the reservation being within the Soulard survey for Labeaume, and confederated to procure the patent to Labeaume for Brazeau's reservation.

All of these allegations have been heard, tried and adjudicated in a former suit between the same parties, and upon precisely the same mat-

ters; and that judgment and decree is in full force now, not reversed, vacated or qualified.

The former judgment and decree of the said St. Louis Land Court is therefore conclusive record evidence of all the facts found, and operates as *res adjudicata* upon each and all the points adjudged or decreed in the former suit. All the points of fact passed upon in the opinion of this Court have been passed upon and adjudicated in said former suit between these same parties in a suit for the same land, and the decree therein is final.

(1.) The special verdict upon the facts, and decree thereon being *res adjudicata* is *a complete bar* to any subsequent suit upon the same matters, between the same parties. See Swift's Ev. 17; Ed. 1859, Phillips Ev.; Cowan, Hill and Edwards' notes, vol. 2, pages 17 to 20; Butts *vs.* Starr, 5 Conn. 550, 553; Coit *vs.* Tracy, 8 Conn. 268; Starkie *vs* Woodward, 1 Nott and McCord, 329; Lessee of Parish *vs.* Ferris *et al*, 2 Black, S. C., U. S. 608; 2 Story's Eq., § 1523 and note; Mitford's Ch. Pl. by Jeremy, 236, 8.

The *special verdict* under the code of Missouri of 1849, upon all material issues in the pleadings, is a part of the decree and judgment in the case, and concludes all parties as part of the record. Sutter *vs.* Street, 21 Mo. 157, 9, 160; Freeland *vs.* Eldridge, 19 Mo. 325; Bates *vs.* Bower, 17 Mo. 550; Lewis *vs.* Stafford, 4 Bibb. 320; Farrar *vs.* Lyon, 19 Mo. 122; McLary *vs.* Bonman, 3 Littell, 248; Walsh's case, id. 142; Jarius *vs.* Harris, 20 Mo. 262; Voorhies *vs.* Bank of U. S., 10 Pet. 449; Lytle's case, 22 How. U. S. 193, 207; Montford *vs.* Hunt, 3 Wash. C. C. P. 28.

The former decree also is conclusive of the claims, equities and pretensions of the plaintiff in the former suit in equity as to all the facts found by the Court in that suit upon the hearing that were material in the cause. Perine *vs.* Dunn, 4 John, Ch. 142; Neafie *vs.* Neafie, 7 Johns, Ch. 1; Story's Eq. Pl. § 793; Wilcox *vs.* Badger, 6 Ohio, 406; French *vs.* French, 8 Ohio, 214; Jenkins *vs.* Eldridge, 3 Story, C.C. 299; 2 Daniels Ch. Pr. 753, 4; Holmes *vs.* Remsen, 7 Johns Ch. 286; 2 Daniels Ch. Pr. 1209 and 1199, and notes.

The rule may be considered well settled, that the judgment of a Court of competent jurisdiction, directly upon a particular point, or state of facts, is, as between the parties, conclusive in relation to such point or facts, even though the purpose and subject-matters of the two suits be different; *a fortiori*, where only the same facts are in controversy, as in this case. See cases above cited; also, Lessee of Wright *vs.* Deklyne, 1 Peters C. C. Rep. 198, 202; Canaan *vs.* Greenwords Turnp. Co. 1 Conn. 1, 7; Cist *vs.* Zeigler, 16 S. and R. 282; Gardner *vs.* Buckbee,

3 Conn. 120; Wright *vs.* Butler, 4 Wend. 284, 288. The application of this principle to hinder endless litigation is uniform in England and in this country, whether referring to judgments in the same Courts or to decisions of Courts of concurrent jurisdiction. *Hopkins* vs. *Lee*, 6 Wheat. 109, 114; *Orphan's Court of Pa.* vs. *Goff*, 14 S. and R. 181; *McPherson* vs. *Cunliff*, 11 id. 422. And this rule holds, whether the Courts are of record or not. So long as they act in their rightful spheres, their adjudications are binding upon the parties in future controversies. It is sufficient, if the Courts rendering prior judgments had jurisdiction. Gahan *vs.* Maingay, 1 Irish, T. A. 20, 23, *et seq.*; Gratz *vs.* Lancaster Bank, 17 S. and R. 278, 281; Starkie *vs.* Woodward, 1 Nott and McCord, 329; Cottom *vs.* Cottom, 4 Rand Rep. 192; Hughes *vs.* Blake, 1 Mason, 515; Brown *vs.* Gibson, 1 Nott and McCord, 326; Blount *vs.* Darrah, 14 S. and R. 184, etc.; Kilheffer *vs.* Herr, 17 id. 319; Hume *vs.* Burton, 1 Ridg. Cas., 204, *et seq.*; 2 Stark. Ev. 211, 212; Borden *vs.* Fitch, 15 Johns. 121; Mills *vs.* Martin, 19 id. 33; Latham *vs.* Edgerton, 9 Cowen, 227; Snyder's Lessee *vs.* Snyder, 6 Binn. Rep. 483; Messinger *vs.* Kuiter, 4 id. 97; Blinn *vs.* Campbell, 14 Johns. 432; Sumner *vs.* Parker, 7 Mass. 79; Wales *vs.* Willard, 2 id. 120; Smith *vs.* Rice, 11 id. 507; Cleveland *vs.* Rogers, 6 Wend. 438; Gowill *vs.* Whittier, 3 N. H. 265; Bowman *vs.* Russ, 6 Corr. 234; Slocum *vs.* Wheeler, 1 Conn. 429; Weston *vs.* Weston, 14 Johns. 428; Sherman *vs.* Ballou, 8 Caren, 304; Cunningham *vs.* Bucklin, id. 178; Newdigate *vs.* Dary, 1 Raym. R. 742.

(2.) The facts adjudicated upon in the prior suit are to be considered as beyond all controversy in this suit, and the special verdict and judgment upon them are not only evidence upon such facts in any second suit, but conclusive evidence thereof as to all facts so found and adjudicated upon between the same parties. See 5 Conn. 550; 1 Peters, C. C. 198, 202; 1 Nott and McCord, 329; 1 Conn. 1, 7; 16 S. and R. 282; 3 Cow. 120; 4 Wend. 284, 288, above cited. Besides, if the record shows that the first suit was *apparently* for the same cause of action sought to be litigated in the second, it will be prima facie evidence that such cause of action has once passed *in rem adjudicatem;* and hence the onus will devolve upon the party against whom the record is used to show the contrary.

Phillips *vs.* Bewick, 16 Johns. 136; Hall *vs.* Andrus, 6 Cow. 225; Snider *vs.* Croy, 2 Johns. 227; Wilson *vs.* Hamilton, 9 S. and R. 424; Cutler *vs.* Cox, 2 Blackf. 178; Squires *vs.* Whipple, 2 Vt. 111, 114; Pickett *vs.* Clairborne, 4 Call's R. 99, 106; Young *vs.* Black, 7 Cranch, 565; Lord Bagot *vs.* Williams, 3 B. and C. 339; Roscoe on Ev. 101. And this he shall do in a manner beyond equivocation, by clear and

decisive testimony, which shall remove all reasonable doubt. Seddon *vs.* Tutop, 6 T. R. 607, per Kenyon, C. S.; also Wilson *vs.* Hamilton, 9 S. and R. 424, 429. Not only are prior judgments conclusive as to the facts and subject-matter therein decided, but also of their own rectitude and justice; and no allegation or evidence, tending to impeach them, will be allowed in any subsequent distinct controversy between the same parties. Hartshorne *vs.* Johnson, 2 Halst. 108; Allison *vs.* Ranklin, 7 S. and R. 269, 271; McNeil *vs.* Bright, 4 Mass. 282, 303; Hoyt *vs.* Gelston, 13 Johns. 139, 153; Perkins *vs.* Fairfield, 11 Mass. 227; Dow *vs.* Warren, 6 id. 328, 329; Commonwealth *vs.* The Pejupscut Proprietors, 7 id. 399; Loring *vs.* Bridge, 9 id. 124; Foster *vs.* Jones, 15 id. 185; Hawes *vs.* Hathaway, 14 id. 233; McKinney *vs.* Crawford, 8 S. and R. 351; Hawley *vs.* Mancius, 7 Johns. Ch. 174, 182. See also Marsh *vs.* Pier, 4 Rawle, 273.

The conclusive effect of the former decree in this case, as *res adjudicata*, and as record evidence conclusive upon the facts found, in all subsequent actions and suits, is fully established by the uniform decisions of this Court from its organization down to this term. Hopkins *vs.* Lee, 6 Wheat. 109; Walden *vs.* Bodly, 14 Pet. 156; Thomas *vs.* Lamson, 21 How. 332; Ableman *vs.* Booth, id. 506; Thomson *vs.* Roberts, 24 How. 233; Parrish *vs.* Ferris, 2 Black. 606; Soc. for Prop. of Gospel *vs.* Hartland, 2 Paine's Rep. 536; Wright *vs.* Deklyne, Pet. C. C. 199; Armroyd *vs.* Williams, 2 Wash. C. C. 508; Blount *vs.* Darrach, 4 Wash. C. C. 657; Goddard *vs.* United States, 15 Leg. Int. 333; Aspden *vs.* Nixon, 4 How. 467; Burnham *vs.* Webster, 1 Wood. and Minot, 172; James *vs.* Stookey, 1 Wash. C. C. 330; Wash. Alex. and Georgetown Steam Co. *vs.* Sickles, 24 How. 333; McCormick *vs.* Sullivant, 10 Wheat. 192; Ex parte Watkins, 3 Pet. 193; Kennedy *vs.* Georgia Bank, 8 How. 586; Huff *vs.* Hutchinson, 14 How. 586; Green *vs.* Sarmiento, Pet. C. C. 74; 3 Wash. C. C. 17; Duvant *vs.* Essex Co. 7 Wall. 107.

ESTOPPEL BY BOUNDARY LINE.

The boundary line was established between Labeaume and Chouteau in the year 1798, by the erection of a stockade on the inner embankment of a ditch; on the south line of the 64 arpens (4 × 16) conveyed to Labeaume by Brazeau on May 9, 1798. (Rec. p. 34.) Chouteau was then the owner of the 4 × 4 arps, called Brazeau's reservation, lying between the big mound and Labeaume's southern stockade, which two monuments are 4 arpens and 20 feet apart. (See deed 1816, Rec. p. 39 and 40.) A lime kiln of Brazeau and a field cultivated by him before 1798 were included within the said reservation, particularly described

in each of said deeds as lying at the foot of said mound, and necessarily south of said stockade boundary. (Rec. pp. 187, 190, 191, 192.) The *first* official recognition of this stockade boundary was in the Spanish survey by Soulard for Labeaume on the 10th of April, 1799 (Rec. pp. 36, 292), certifying that it was made in the presence of the proprietors and the adjoining neighbors, Chouteau being the only adjoining owner on the south of the stockade boundary who held Brazeau's lime kiln and fields lying between the big mound and Labeaume's stockade (Rec. 187, 190, 191, 192), by virtue of a verbal sale from Brazeau to him prior to the said deed from Brazeau to Labeaume in 1798. (Rec. 39.) The *second* official recognition of this stockade boundary was on Oct. 15, 1799, in the petition of P. Chouteau to the lieutenant-governor of the province for a grant of land between Antoine Roy's tract and the said stockade line of Louis Labeaume, Chouteau's tract being 19 arpents in length between Labeaume's stockade and Roy's tract, by a depth of 6 arpents westwardly from the Mississippi. (Rec. 141. Map 253: on second page, 141, marked p. 262, meaning marginal page.) On said map of Chouteau's tract, the whole area of Chouteau's tract is exhibited; and at the north boundary of Chouteau's land appears the stockade fence of Labeaume, pictured as the boundary stockade between the tracts of Labeaume and Chouteau; and the following words appear immediately north of the pictured stockade, within the Labeaume tract: "Don Louis Labeaume, fosè que servè dē estècado" (that is, "ditch which serves for a stockade"). Below the stockade appear the words, "N. 74. E. 70 p's. Don Pedro Chouteau 133 arpents." This survey was made in the presence of Labeaume and of Chouteau, on June 17, 1803 (Rec. 355, 356); and the said stockade of Labeaume was *thirdly* officially recognized as the common boundary line between the lands of Chouteau and Labeaume upon the official records of the Spanish government. (Rec. 293.) P. Chouteau acquired the inchoate pretensions of the mulattress, Esther, and of Brazeau, covering all of his [Chouteau's] grant to the extent of 4 arpents in depth on the Mississippi, by the length of 19 arpents between Labeaume and Roy (see deeds of Esther to Clamorgan, of Clamorgan to Chouteau, and of Brazeau to Chouteau, Rec. pp. 39, 233, 234) concentrating in Chouteau all Spanish grants south of Labeaume's stockade boundary, down to Roy's tract. The *fourth* recognition of Labeaume's stockade boundary was by deed dated July, 1816, from Brazeau to Chouteau for the said reservation; in which he conveys to Chouteau 4 arpents of land at the foot of the big mound (bounded by the stockade of Labeaume on the north), and declaring that "Louis Lebaume accepted the said deed to him, under the terms and conditions therein

mentioned," and that the land reserved in the deed to Labeaume in 1798 is the same land granted to said Chouteau, and necessarily lying between the said mound and stockade. (Rec. 39, 40.) The *fifth* official recognition of Labeaume's stockade boundary was in an official protest by P. Chouteau to the commissioner of the General Land Office, June 24, 1818, in which he declares his purchase of all the private claims extending up to Labeaume's land; that the location of a New Madrid certificate between the mound and the ditch of Labeaume excites his surprise and regret. (Rec. 107, 108.) This official protest is more definitely applied to Brazeau's reservation by a second protest of said Chouteau to the said commissioner, May 20, 1826, in which he declares that the said New Madrid location covered "the whole of a small tract of 16 arpens which I had purchased from Joseph Brazeau, to whom it had been confirmed by the old board of commissioners, and also part of another tract of 93 $\frac{1}{100}$ arpens confirmed to me by the same board, lying and patented between Roy and the north foot of the mound," and refers to said prior protest of 1818; and again protests against the Peyroux location being made on the land between Labeaume's stockade and ditch and the big mound, because it would cover the Brazeau reservation. (Rec. 108, 109.) The said Peyroux New Madrid location commenced at the southern stockade of Labeaume, and included all the land lying south of that boundary and east of the St. Louis common field to the river Mississippi, to the extent of 160 acres, including Brazeau's reservation, Chouteau's confirmation, and all the other confirmed Spanish grants, to the Spanish town of St. Louis. (Rec. 232.) The *sixth* official recognition of Labeaume's stockade boundary was the United States survey, Feb. 2, 1852, and patent March 25, 1852, for the land in Soulard's survey, which calls for the boundary of the old ditch of Labeaume on the south, the stockade on the top of the embankment then having disappeared and fallen to decay. (Rec. 59 to 72.) The *seventh* official recognition of Labeaume's stockade boundary was the United States survey for Brazeau, Feb. 26, 1852, locating the Brazeau reservation as it had always been located from its creation, south of and adjoining Labeaume's stockade boundary at the foot of the said big mound. (Rec. 155 to 159.)

AS TO THE POSSESSION BY THIS COMMON BOUNDARY

Labeaume enclosed in 1798 the 16 arpens in length, which he had purchased of Brazeau, with a stockade enclosure, made by digging a ditch from the outside about 8 feet wide by 6 feet in depth, throwing the earth to the inside, and raising an embankment, into which were driven pickets forming the stockade. When these pickets decayed, their place

was supplied by stakes and rails. Within this enclosure he built houses for himself and his servants, and held possession, carrying on a farm there from 1798 to 1816, when he sold to William Chambers, who conveyed two undivided thirds of his interest to Christy and Wright, who have held possession within the same boundaries from 1816 to this day. The evidence is absolutely conclusive that this possession was continued within the boundaries of Labeaume's stockade from 1798 to the commencement of this suit by Labeaume and his grantees, claiming up to the old line of the stockade boundary, dividing Labeaume's land from Chouteau's; and that Chouteau and his grantees knew of such possession and claim during the whole period of its possession by Labeaume and his grantees. See Rec. Ev. of Jacques Labbe, 187; Antoine Smith, 190; Survey of Soulard for Labeaume of 1799 (pp. 36, 292, 293); Spanish survey for Chouteau and plat. Rec. 142; Ev. of Joseph Labarge, p. 191; of I. B. Hortiz, p. 192; of Wm. Waddingham, p. 193, 4, 5; Letter of Lapsley, p. 195; Ev. of William Milburn, p. 142, *et seq.*; of Walker, p. 195; of C. G. Hoyt, p. 197; of Neal Walker, p. 198; of Jerusha Walker, p. 199; of Phineas Bartlett, p. 200; of E. Tanner, p. 218; of John T. Walker, p. 239; of M. L. Clark, pp. 93, 94; Protests of P. Chouteau of 1818, and 1826, Rec. 107, 108, 109, declaring the southern stockade boundary to be the ditch of Labeaume. This evidence establishes an absolute acquiescence from 1798 to 1826 by P. Chouteau in the possession of Labeaume and his grantees up to the line of said stockade boundary, dividing the tracts and serving as a common boundary between Chouteau and Labeaume.

The plaintiff is therefore forever estopped from recovery of this land, both in law and equity; inasmuch as the boundary line, to wit, the stockade boundary line between Labeaume, under whom the defendants claim title, and Chouteau, under whom the plaintiffs claim title, was established in 1799 by the Spanish Surveyor General, by his official survey, made in the presence of both the parties then in possession of the land, with their mutual consent and agreement, followed by a possession of the land sued for by the defendants and their grantors from 1798 to this day, and acquiesced in by the grantor of the plaintiff, and declared by him in solemn official documents and deeds to be the true common boundary line of the lands of both parties, for twenty-eight years continuously. See Taylor and Mason *vs.* Zepp, 14 Mo. 482; Lindell *vs.* McLaughlin, 30 Mo. 28; Knowlton *vs.* Smith, 36 Mo. 507; Brewer *vs.* Boston and Worcester R. R. Co. 5 Metc. 478; Talman *vs.* Sparhawk, id. 469; Codman et al *vs.* Winslow, 10 Mass. 155; Stone *vs.* Clark, 1 Metc. 378; Spaulding *vs.* Warren, 25 bb. 316; Clark *vs.* Taber, 28 bb.

222; Ackley *vs.* Buck, 18 Vt. 395; Burton *vs.* Lazell, 16 Vt. 158; Berry *vs.* Garland, 6 N. H. 473; Orr *vs.* Hadley, 36 N. H. 575; Gray *vs.* Berry, 9 N. H. 473; Smith *vs.* McAllister, 14 Barb. 434; Baldwin *vs.* Brown, 16 N. Y. 359; Larerty *vs.* Moore, 32 Barb. 347, and 33 N. Y. 658; Adams *vs.* Rockwell, 16 Wend. 285; McCormick *vs.* Barnum, 10 Wend. 104; Kip *vs.* Norton, 12 Wend. 127; Jackson *vs.* Corlear, 11 Johns. 123; Jackson *vs.* Dyeling, 2 Caines, 201; also, 6 Wend. 467; 7 Johns, 5; Kerr *vs.* Wright, 37 Pa. St. 196; Armstrong *vs.* Risteau, 5 Mo. 256; Walker *vs.* Derlin, 2 Ohio (N. S.), 593; Riley *vs.* Griffin, 16 Geo. 141; Carroway *vs* Chacey, 2 Jones Law (N. C.), 222; Ball *vs.* Cox, 7 Ind. 453; Myers *vs.* Johnson, 15 Ind. 261; Faught *vs.* Holway, 50 Maine, 24; Daggett *vs.* Willey, 6 Fla. 482; Houston *vs.* Sneed, 15 Tex. 307; George *vs.* Thomas, 16 id. 74; Gilchrist *vs.* McGee, 9 Yerg. 455; Moody *vs.* Nichols, 4 Shep. 23; Blair *vs.* Smith, 16 Miss. (1 Bennett), 273; Clark *vs.* Lockwood, 21 Cal. 220; Lebeau *vs.* Bergnon, 14 La. Ann. 489; Boyd's Lessee *vs.* Graves *et al*, 4 Wheat. 513; Rhode Island *vs.* Mass. 4 Howard, U. S. 591; Duchess of Kingston's Case in Smith's L. C. 655 to 843, with Hare and Wallace's notes.

CONCLUSIVE RECORD EVIDENCE OF BOUNDARY, AND POSSESSION ACCORDING TO IT.

The special verdict and decree of the St. Louis Land Court, in a case between these same parties and for the same matters, put this question of boundary forever at rest, as follows: Judge Lord finds and decrees in 1858 (Rec. 270, 1, 2), "That the said tract of 4 × 4 arpents of land which was confirmed to said Joseph Brazeau is situate in the northern part of the present city of St. Louis, in the County of St. Louis, on the south side of an old ditch, called and known as Labeaume's south ditch; that said Pierre Chouteau, under whom plaintiff claims title to the land in question, on the fifteenth day of October, 1799, petitioned for a tract of land between Roy and Labeaume of the width of six arpents; that Labeaume's ditches were then made; that Chouteau in his petition called for the line of the land of Louis Labeaume for his northern boundary; that at this time Joseph Brazeau had promised to convey the 4 × 4 arpents to P. Chouteau; that at the time of the survey made in 1803, the south ditch of Labeaume was recognized by all the adjoining proprietors as Labeaume's south line; and that possession was claimed and held with such recognition from the time of said survey, in 1803, until about 1823."

The Court further finds (Rec. p. 272), "That said Louis Labeaume and those claiming under him have had possession of and have used, occu-

pied and enjoyed the premises in controversy from about 1798 to the time of the commencement of this suit."

The said finding and decree of 1858 are *conclusive record evidence of the said facts*, in this and all subsequent suits, and cannot be controverted or disputed. This rule of evidence is never departed from, and has been universally established by a multitude of authorities in Great Britain and the United States. See Phillips' Ev. Cowan, Hill and Edwards' notes, ed. 1859, vol. 2, pages 17, 18, 19 and 20, and cases cited in the notes.

THERE IS NO EQUITY IN THE PLAINTIFF'S BILL.

The State Court was bound to dismiss the bill for this reason alone. The opinion of the Court in this case virtually admits this, by declaring that the Labeaume patent did not convey the 4 × 4 arpents in the southeast corner to Labeaume, and that the new patent of 1862 to Brazeau did convey that identical land, and vest in him the legal title.

If this be so, then Brazeau acquired a legal title to the land sued for, by force of the new patent, and his remedy is strictly at law and not in equity. The plaintiff's bill avers that defendants held the legal title under Labeaume's patent, and asks the aid of the Court in Equity to divest that legal title out of the defendants and vest it in the plaintiff. The opinion of this Court is in direct conflict with the bill, and holds that there is no equity in this case, after the issue of the patent in 1862, on which this suit is founded, in connection with the pretended equities which have no existence, and for the enforcement of which no precedent or authority can be found.

Aside from this opinion, there is manifestly no equity in the bill of which a Court of Equity can take judicial notice, as between these parties. The equity specially alleged in the bill consists, first, in a supposed priority of inceptive right, by reason of the Spanish grant to Brazeau being elder than Labeaume's; second, that the Spanish Surveyor General, by mistake or design, included all of Brazeau's concession in his official survey for Labeaume; third, that the 4 × 4 arpents of Brazeau are in the southeast corner of Labeaume's patent; fourth, that the defendants or their ancestors were guilty of fraud in procuring a survey and patent in 1852 so as to include the 4 × 4 arpents of Brazeau in the southeast corner as aforesaid; fifth, that defendants had notice of Brazeau's equity before they acquired the said land under Labeaume; sixth, that the new patent of Brazeau in 1862 for 4 × 4 arpents in the southeast corner of Labeaume's patent conflicts with it, and that Labeaume's patent is a cloud upon plaintiff's title; seventh, that the patent of Labeaume is older than the patent of Brazeau, and

that the Court ought to divest the title of defendants acquired from Labeaume and vest the same in plaintiff.

The plaintiff's claim of prior equity under the Spanish grant is a mere political equity, of which a Court of Equity can take no cognizance. See Chouteau *vs.* Eckert, 2 How. 371; LeBois *vs.* Brammell, 4 How. 449, 461; Strother *vs.* Lucas, 12 Peters, 410; Menard *vs.* Massey, 8 How. 306; Barnard *vs.* Ashley, 18 How. 44; Garland *vs.* Wynn, 20 How. 6; United States *vs.* Hughes, 11 How. 567; Carroll *vs.* Stafford, 3 How. 441; West *vs.* Cochran, 17 How. 412, 413, 417, upon this same title; *Mackey* vs. *Dillon*, 4 How. 400.

These cases conclusively establish that the Spanish titles of Labeaume and of Brazeau created no judicial equity or title upon which the parties could make any claim at law or in equity in a court of justice. The treaty of 1803, guaranteeing to the inhabitants of the territories of Orleans and Louisiana protection in their property, has been uniformly held by this Court to raise a mere political equity, and to confer no title or right in law or equity which can support any action on Spanish grants like Brazeau's prior to confirmation by the United States. The title must be derived from the United States, and takes effect by relation to the date of the filing of the claim for confirmation; and the patent issued on the confirmation will relate to the filing of the claim, and pass the legal title as of the date of said claim. Landes *vs.* Brant, 10 How. 373; French *vs.* Spencer, 21 How. 228; Ross *vs.* Doe, *ex dem.* Borland, 1 Peters, 664; Beard *vs.* Federy, 3 Wall. U. S. 478; Grezar *vs.* McDowell, 3 Wall. U. S. 380; Stark *vs.* Storrs, 6 Wall. U. S. 402.

These decisions, vesting the legal title by enurement and relation as of the date of the claim, preclude a Court of Equity from taking any cognizance of any equitable title where two patents have issued for the same land, because the priority of the legal title is conclusively determined upon the face of the patent and the record of the board of commissioners by the well-settled doctrine of relation; and the only remedy of an adverse claimant on such a title is at law. Where the claims and confirmations to two different parties for the same land are of the same date, the one in possession must hold. McGill *vs.* Somers, 15 Mo. 80.

In the surveys by the United States Surveyor-General for Brazeau in his behalf, and for Labeaume in his behalf, pursuant to which patents issued in the year 1852 to the respective parties, there is no fraud with which to charge the plaintiff or defendant or their grantors, nor any circumstance to raise a suspicion of fraud. The federal officers simply performed the duties imposed upon them by acts of Congress, commanding them to make the surveys and to issue the patents for the specific

tracts of land described in the respective surveys. 2 U. S. Stat. at Large, 327, 440. This was an exercise of sovereign power which is final and conclusive of the location of the respective grants, and is not open to judicial inquiry. West *vs.* Cochran, 17 How. 413, 417; and cases first above cited. Cases arising under confirmations of Spanish grants by boards of commissioners in Missouri, on which patents have issued, must be carefully distinguished from cases concerning entries, preëmption rights, and New Madrid locations, where the party is a purchaser from the United States for a valuable consideration paid. Where such conflicting equitable rights exist either before or after a patent, a judicial equity arises in favor of the party having the prior entry, preëmption or location, and a Court of Equity will take jurisdiction to protect the better equity which has emanated from the government under acts of Congress. The granting of relief in such cases forms no precedent to support the equities claimed in the plaintiff's bill. Garland *vs.* Wynn, 20 How. 6; Barland *vs.* Ashley, 18 How. 44; United States *vs.* Hughes, 11 How. 567; Carroll *vs.* Stafford, 3 How. 441; Bodley *vs.* Taylor, 5 Cranch, 191; Taylor *vs.* Brown, 5 Cranch, 243.

The equities alleged in plaintiff's bill do not concern any contracts, relations, privities, obligations, trusts, agencies, or any transaction or conduct whatever arising between the parties respecting any right, title or property which had emanated from the United States, and in respect of which the plaintiff had acquired any prior or other equity. Throughout all the proceedings in these claims, the respective parties have acted independently of each other, and have made separate efforts to obtain the complete evidences of their respective titles. All equities existing in favor of either of the claimants, under the former government prior to the confirmations, are merged in the equity or justice of the claims, which were finally decided by the action of the political power of the United States. If any equity could exist prior to the acts of Congress, this Court would have no power or jurisdiction to consider it, and the alleged mistake of Soulard in his survey for Labeaume in 1799 arose in the exercise of the sovereign power of the Spanish government, over which this Court has no jurisdiction; and yet that alleged mistake by the Spanish Surveyor General is the main ground upon which the opinion in this case is based.

The distinction between proceedings at law and in equity, in the State Courts of Missouri, is well established; and under the code of practice, jurisdiction of equity cases has never been taken, except in accordance with the jurisprudence and forms of pleading in Courts of Chancery.

In the opinion of the Court, it is stated "The case was one brought here from a State Court, where the distinction as to the remedy between legal and equitable titles is not observed." (Opinion, p. 33.)

There is no State in the Union where the distinction between the remedies on legal and equitable titles is more strictly observed than in the State of Missouri.

Equity practice and pleading have been retained in Missouri in full force since the organization of the State. *Rector vs. Price*, 1 Mo. 373; *Tesson* vs. *Atlantic Mut. Ins. Co.*, 40 Mo. 33: *Clarkson* vs. *Curly*, id. 114; *Wade* vs. *Beldmeyer*, id. 486; 23 Mo. 50. The distinction between remedies and proceedings in suits at law and equity has always been strictly preserved in Missouri. See cases above cited; also *Pauley* vs. *Vogel*, 42 Mo. 291; *Rutherford* vs. *Williams*, 42 Mo. 18; *McIlvaine* vs. *Smith*, 42 Mo. 45; 21 Mo. 331; *Risher* vs. *Ronsch*, 2 Mo. 95.

To entitle a party to *relief in equity*, there must be some ground for specific relief beyond a mere claim for damages or for the payment of money recoverable only in an action at law. *Rutherford* vs. *Williams*, 42 Mo. 19; 6 Mo. 16; 16 Mo. 457; Rector *vs.* Price, 1 Mo. 373; 4 Mo. 384; 20 Mo. 222. *State ex rel Allen* vs. *St. Louis Cir. Ct.* 41 Mo. 576.

A recovery cannot be had in chancery, on grounds foreign to those stated in the bill. McKnight *vs.* Bright, 2 Mo. 110; nor on a legal title in the plaintiff, where the equitable claim is to divest a legal title vested by a patent in the defendants. See cases above cited. The general charge of fraudulent combination, etc., usually inserted in a bill, is not sufficient; there must be an allegation of specific fraud. *Lewis* vs. *Lewis*, 19 Mo. 182.

The finding and decree of the St. Louis Land Court were, "That the conveyance made by Labeaume to Chambers in 1816, through whom the defendants claim title, was made upon good and valuable consideration, and without any notice of the equities now set up by the plaintiff." (Rec. p. 272.)

The decree of the St. Louis Land Court of the 22d June, 1858, affirmed in the Supreme Court of Missouri, which judgment was affirmed in this Court, was made on a special finding of facts, specially and conclusively barring all relief in equity on any ground stated in the opinion of this Court. (Rec. p. 268 to 272.)

The parties are the same, and the plaintiff's bill is identically the same now as before, except the averment, that a new patent was issued to Brazeau on a survey of 1862; and the answer to the first bill is the same as the answer to the second bill, except as to *res adjudicata* and

the effect of the new patent. The prayers of the two bills of the plaintiff are the same, to divest the right and title of defendants out of them, and vest it in the plaintiff. (Rec. 246 to 255. Rec. 3 to 8.)

The special finding of facts, and the decree thereon of the 22d June, 1858, are conclusive evidence by the record in this case and all others on the same title, of all the facts so found; and all the equities, facts and evidence commented on in the opinion are expressly barred and precluded from any consideration by this Court, by force and effect of the former record, and of this record, which contains the former record specially pleaded as a bar to this action, and given in evidence *in extenso*. (Rec. p. 20, 25; 243 to 311.)

The findings of the St. Louis Land Court in 1858, and the opinion of the Court being exactly opposed on boundary and other questions of fact, the original finding and judgment are conclusive in all Courts forever, and there can be no equity in plaintiff's bill whatever.

DEFENDANTS ARE INNOCENT PURCHASERS WITHOUT NOTICE.

The grantors of defendants, Chambers, Christy, and Wright, were innocent purchasers, in 1816, of all the land in Soulard's survey, including within it the tract sued for, for full value, without any notice of any right, title, claim or equity in favor of Brazeau or Chouteau to any part of the land sued for. This defence is conclusively proved by the record evidence in this case.

Brazeau sold to *Labeaume* in 1798, the 64 arpents included within Labeaume's stockade boundaries for $40. Rec. p. 34. The 4 × 4 arpents reserved at the foot of the big mound was sold by *Brazeau* to *Chouteau* prior to 1798 for $1, Rec. 39, 40; as shown by deed, dated July 26, 1816, reciting the Spanish verbal sale. Rec. 39, 40. On April 27, 1816, Labeaume and wife being in actual possession, conveyed to William Chambers the 374 arpents, according to the Soulard survey for Labeaume, for $7,460, cash in hand paid, with the following *covenants:*

(1.) Of seizin and possession of a perfect estate in fee simple.

(2.) Of authority full and lawful to convey to Chambers, his heirs and assigns.

(3.) Against all incumbrances.

(4.) Of warranty.

Which deed was recorded 3d July, 1816, in records of St. Louis County. (Rec. p. 102.)

On May 4, 1816, William Chambers conveyed to William Christy

and Thomas Wright for $4,973.33 two undivided third parts of the same tract of land, with full covenants. Recorded July 3, 1816. (Rec. p. 105, 106, 107.)

The said purchasers, Chambers, Christy and Wright, entered into the possession of said land, within Soulard's survey, immediately after the date of said deeds, making valuable improvements thereon; and they, their heirs and grantees, have held open, notorious possession ever since, claiming to own the same. (See special verdict, Rec. 271, 2, 3. and the evidence of possession cited under the first point as to the boundary line.)

The foregoing facts conclusively prove,

1. That Mr. Chouteau, the plaintiff's grantor, did know, assert and insist that the Brazeau reservation was specifically located and fixed forever on the land lying south of Soulard's survey and outside of the bounds thereof; and there is no reason to conclude from the evidence that either Chambers, Christy or Wright ever had even a doubt as to these facts. All their acts show they supposed themselves the absolute *bonâ fide* owners of the whole of the land within the Soulard survey, conveyed to them by the said recorded deeds. The plaintiff avers that the defendant bought with notice of an outstanding equitable claim, but brings no proof to establish such an assumption.

These deeds were made prior to the United States survey of 1817. There were then no existing recorded Spanish surveys for the lands north or south of Labeaume's stockade boundary on the river Mississppi, excepting the Spanish surveys made by Soulard, the Spanish Surveyor General, for Labeaume and for Chouteau, of their respective tracts on each side of said stockade boundary, commonly called "Labeaume's ditch," which was made to furnish the embankment for the stockade. No Spanish surveys were ever made for Brazeau or for Esther. The survey of Soulard for Labeaume was recorded in the Registrè D'Arpentage of the Province of Upper Louisiana, April 10, 1799. Rec. p. 293.

The Spanish survey for Chouteau was officially certified by the Spanish government, June 17, 1803, and executed March 10, 1803. (Rec. 141 and 355, 6.)

Chouteau had concentrated in himself all the inchoate claims of the mulattress Esther and of Joseph Brazeau, and admitted, once before the governor of the province, and twice before the Spanish Surveyor General, in official proceedings to which he was a party, that the Soulard survey for Labeaume correctly described the land conceded to Labeaume, and that the land included within it was Labeaume's land. Rec. 141, 355, 6,

36, 292. On July 25, 1816, Rec. 39 and 40, Chouteau accepted a deed from Brazeau for the reservation, locating it between the big mound and Labeaume's ditch. (Rec. 151, 155, 156, 93, 94, 95, 96, 100, 101, 130, 138.)

And afterwards the said Chouteau, in 1818 and 1826, as owner of the Brazeau reservation now sued for, in two official protests to the Commissioner of the General Land Office asserted that the Brazeau reservation was situated between the big mound and the stockade boundary or ditch of Labeaume. (Rec. 107, 8, 9.)

In the conveyances, chain of title and official protests set forth, there are no proofs of any outstanding equities in third parties, to Labeaume's tract as surveyed by Soulard; the deeds are specific, Labeaume taking title to the 64 arpents north of the ditch from Brazeau; and Chouteau, taking title south of the ditch from Brazeau, and each party possessing and improving the land in accordance therewith. Chambers took from Labeaume and wife; Christy and Wright took from Chambers. The chain of title from Brazeau through Labeaume to Christy and Wright is complete for the specific land in Soulard's survey. An examination of the deeds shows conclusively that each vendee was a *bonâ fide* purchaser for a valuable consideration, without notice of any fraud or mistake in the grant to his vendor. In such cases, *bonâ fide* purchasers for value hold the estate against the original grantor and his heirs and all other persons. *Dexter* vs. *Harris*, 2 Mason, 231. Nor has a purchaser, by law, constructive notice of all matters of record, but only of such as the title deeds of the estate refer to or put him on inquiry for (id). Nor will it be competent to charge him, if without notice he purchased of one who had obtained his conveyance by fraud. *Jackson* vs. *Henry*, 10 Johns, 185. It is true the Spanish verbal sale recited in the deed from Brazeau to Chouteau, dated July 26, 1816, was not of record; but the recital in the deed was all-sufficient to bind Chouteau and his grantees; since an explicit notice (as this was) of a former unrecorded conveyance to the purchaser, Chouteau, has the same effect upon him as if the former conveyance had been on record. *Tart* vs. *Crawford*, 1 McCord, 273.

The title of a *bonâ fide* purchaser for a valuable consideration is not to be affected by loose, vague and uncertain evidence of the existence of a prior title, admitted to be unlocated and indefinite; and if a former owner neglects to record his title or assert it by claim or possession, every presumption is to be made in favor of a subsequent *bonâ fide* purchaser. *Boggs* vs. *Warner*, 6 W. and S. 469. This precludes the plaintiff from setting up any unrecorded title against the *bonâ fide* purchasers without notice from Labeaume. See also, *French* vs. *Loyal Co.*, 5 Leigh

627. *Crockett* vs. *Magwire*, 10 Mo. 34; Lodge *vs.* Simonton, 2 Penn. 439; White *vs.* Carpenter, 2 Paige, 217, 253; Connecticut *vs.* Bradish, 14 Mass. 291; Gomedie *vs.* Northampton Water Co., 7 Barr. 233; McNair *vs.* Lot., 34 Mo. 300, 2. *Le Neve* vs. *Le Neve*, 2 W. and T. Lead. Cas. Eq. 116, 120, Am. Ed.; Alexander *vs.* Pendleton, 8 Cranch, 462; Fletcher *vs.* Peck, 6 Cranch, 133. See also the special finding and decree of the St. Louis Land Court (Rec. 272) to the following effect: "That the conveyance made by Labeaume to Chambers in 1816, through whom the defendants claim title, was made upon good and valuable consideration, and without any notice of the equities now set up by the plaintiff."

This finding and the decree are conclusive proof of record that Chambers was a *bonâ fide* purchaser for value of all the land in Soulard's survey, without notice of any of the equities claimed by plaintiff; and in the present action all the evidence of plaintiff to controvert that fact was inadmissible, and without any relevancy, the former decree being conclusive as to those facts. *Coit* vs. *Tracy*, 8 Conn. Rep. 268; *Starkie* vs. *Woodward*, 1 Nott and McCord, 329; *Dennison* vs. *Hyde*, 6 Conn. Rep. 508.

This principle will be found to run through all the cases; that the judgment and decree of a Court of competent jurisdiction, directly upon a particular point, is as between the parties conclusive in relation to such point, though the purpose and subject-matter of the two suits be different; and hence that a judgment or decree may not only be *evidence* but *conclusive evidence* of the facts found, and still be no bar as *rem adjudicatem* to a second action. See Phillips' Ev., Cowan, Hill and Edwards' notes, Ed. 1859, pages 17, 18, 19, 20, and cases cited in notes.

It is impossible to conceive or to imagine how Wm. Chambers, Wm. Christy, and Thomas Wright, in 1816, could have had any notice of Brazeau's claim as one located inside of Soulard's Spanish survey. If they had *inquired* of Chouteau, he would have told them, as he officially informed the commissioner of the General Land Office, that Brazeau's reservation was his land lying south of the Soulard survey, between Labeaume's ditch and the foot of the big mound. As the Supreme Court of the United States in *West* vs. *Cochran*, 17 How. 412, 16, and *Magwire* vs. *Tyler*, 1 Black. 198, 9, held the said reservation to be located conclusively at the same place, in a decision at law and in equity the conclusion is irresistible, that Chambers, Christy and Wright had no notice of this claim of Brazeau, and could by no possibility have had any.

PLAINTIFF HAS NO DERIVATIVE TITLE FROM BRAZEAU.

The plaintiff has no title by deed or otherwise to the Brazeau reservation if it be located in the southeast corner of the Labeaume patent: so that he stands before the Court without any title, claim or equity to any part of the land sued for, embraced by the new patent to Brazeau of 1862.

First. The deed of Brazeau to Labeaume in 1798 (Rec. 34) conveys to Labeaume in the granting clause the whole of his concession, consisting of four arpens of land from the foot of the elevation or mound, commonly called the "Grange de Terre," by twenty arpens in depth, bounded by the Rocky Creek at the end opposite the said mound; east, by the Mississippi River; and west by the royal domain, the said Brazeau reserving to himself four arpens of land, to be taken at the foot of the mound (the place of beginning), in the south part of said land, only selling to this effect sixteen arpens in depth to Mr. Labeaume. The conveyance to Labeaume is of all the land between the big mound and the Rocky Creek. The distance to the Rocky Creek from the foot of the mound on the western line of the Brazeau concession, four arpens from the river Mississippi, is twenty-six and one-half arpens; the concession to Brazeau (Rec. 34) calls for the grant to extend beyond the mound twenty arpens, extending to the environs of the Rocky Creek. The boundary of the Rocky Creek in the said deed is therefore manifestly an error, for the place of beginning controls. *Jackson* vs. *Wilkinson*, 17 John. 146.

The deed, however, from Brazeau to Labeaume conveys the entire concession as eighty arpens of land, being four in width by twenty arpens in depth. If the reservation of Brazeau at the foot of the mound is not included within the 4×20 arpens conveyed to Labeaume in the granting clause of the deed, then it does not operate as an exception of any part of the land granted. 3 Wash. R. P. 370; Cutler *vs.* Tufts, 3 Pick. 377; Adams *vs.* Frothingham, 3 Mass. 361, 2; 4 Greenl. Cruise, Title 32, Deed, ch. 21, § 66, vol. II. p. 650, alias, p. 271, 272.

The exception must be certainly described and set down, or it is void for uncertainty. See 4 Greenl. Cruise (above cited). If Brazeau were the owner of the 4×20 arpens covered by Soulard's survey of 1799, and the exception is for land at the foot of the mound, according to the words of the deed creating it, then the whole 4×20 arpens passed to Labeaume by the deed, and the exception not being described with certainty to lie within the said survey is void. The beginning line controls, to wit: at the foot of the mound; and the reservation must be located there by the description, 4 Tyng, 205; 3 Atk. 9; Dyer, 50; 7

Johns. 217; 18 id. 60; 19 id. 449; 6 Hill, 453; 10 N. Y. 509; 17 Johns. 29; 4 Mass. 196; 6 Cow. 281. The reservation is described with certainty as lying at the foot of the mound, and necessarily south of, and adjoining Labeaume's ditch; and if the reservation as thus described is not within Brazeau's concession, it is void, being on lands of another. Large *vs.* Penn, 6 S. and R. 488; Emery *vs.* Fowler, 38 Me. 99; Chandler *vs.* McCard, id. 564; Marsh *vs.* Marshall, 19 N. H. 301; White *vs.* Miller, 22 Vt. 380; Hunt *vs.* Stull, 3 Md. ch. 24; Marshall *vs.* Bomparte, 18 Mo. 84; Krase *vs.* Scripps, 11 Ills. 98.

The terms of description used in a reservation or exception are subject to the same rules of construction as the same terms when used in a deed; and the reservation or exception in Brazeau's deed of 1798 is to be construed by the Courts precisely as if Brazeau had made the deed to Labeaume for all of his concession, consisting of 4×20 arpens, bounded, etc., as in the deed, without any reservation whatever, and the reservation is to be construed to operate as an exception, precisely as if Labeaume had made a deed back to Brazeau of the same date for 4×4 arpens of land, beginning at the foot of the mound, to be bounded east by the Mississippi. If Brazeau's original concession did not cover the land thus reserved as an exception, Labeaume could have no title to the exception, and could give none to Brazeau. 3 Wash. R. P. 370; 4 Greenl. Cruise, p. 271, 272; Shep. Touch. 77.

Brazeau conveyed the said reservation to Chouteau by deed of 1816 (Rec. 39, 40), as land situated at the foot of the mound called "La Grange de Terre;" and under this deed alone the plaintiff claims title to the land sued for, although the said deed of 1816 does not cover it, or describe it. The testimony of all the witnesses in the case on both sides who speak of the location of the land described in the said deed from Brazeau to Chouteau is conclusive that it is at the foot of the mound, and bounded by the Mississippi River on the east, which necessarily fixes the location south of Labeaume's stockade boundary, precisely where it was patented for Brazeau by the United States in 1852. William Millburn, Surveyor-General, says (Rec. 151): "The deed from Brazeau to Labeaume, according to this deed, I would begin at the foot of the mound; as I understand the words, at the foot of the hill or mound are the same thing. According to the description in this deed, I would locate it about where the United States survey 3332 would place it." This is the survey for Brazeau's reservation of 1852, at the foot of the mound south of Labeaume's ditch (Rec. 155, 159): — "I now take the deed from Brazeau to Chouteau." (Rec. 151, and 39.) "According to this deed, I would begin at

the foot of the mound, about where United States survey 3332 would place it; if any difference, a little south of the survey." N. F. Hyer, plaintiff's witness, testified (Rec. 95, 96):

Q. Can you locate the land thus described, which consists of four arpens of land, to be taken from the foot of the hillock or mound called "La Grange de Terre," by twenty arpens in depth, bounded by the Rocky Branch which is opposite the mound, east by the Mississippi River, and west by the King's domain, the said Brazeau reserving for himself four arpens of land from the foot of the mound in the south part of the tract?

Ans. In that case, I should commence at the extreme northern base of the artificial mound, and continue up to where a line parallel with a line forming the south boundary of the tract would strike the Rocky Branch when produced. The line forming the southern boundary would be a straight line from the mound to the river. I should there locate the reservation at the southern extremity of the 4 × 20 arpens so located.

A. H. Evans, (Rec. p. 100). Same question put to this witness as to Hyer.

Ans. "I should begin at the foot of the mound, at Brookline street, as he (meaning Hyer) says. In surveying, it is customary to take the beginning named in the paper. But starting from the foot of the mound you would never reach the creek with your twenty arpens. Taking that beginning, the west line of the Brazeau tract would fall away from where it is on the map, and the whole tract would contain . . . more than one hundred and twenty arpens."

See also, to same effect, diagram of Wm. H. Cozzens (Rec. 126), and Cozzens' testimony, Rec. p. 121, 122, 123, 129, 130, in which he demonstrates that the Brazeau reservation in the deed to Labeaume can only be located south of Labeaume's ditch at the foot of the mound; also, M. Louis Clark's testimony, that "the beginning point for the reservation is the mound."

The big mound is an artificial erection, and its sides are well defined (Rec. 129, 99, 126). Cozzens testifies, "From the north end of the big mound, along front line of common fields to Labeaume's southern ditch is four arpens and twenty French feet." (Rec. 126.)

In addition to this evidence, the finding and decree in the former suit in equity between these same parties, upon the same identical subject-matter, is conclusive record evidence of the location of the Brazeau reservation in the precise place described by the deed of 1798, and fixes it forever at the foot of the big mound, south of the southern ditch of Labeaume. The judgment and decree on this fact is as follows:

"The Court finds from the evidence the following facts" . . . (Rec. 268): "That afterwards, on the 9th of May, 1798, the said Joseph Brazeau, by his deed of that date, sold and conveyed the said tract or parcel of land conceded and granted to him as aforesaid, to one Louis Labeaume, excepting however, and said Brazeau in his deed reserved to himself, four arpents of said tract of land 'to be taken at the foot of the hillock in the southern part of said land.' . . . (Rec. 269). That the said tract of 4 × 4 arpents of land, which was confirmed to said Joseph Brazeau, is situate in the northern part of the present City of St. Louis, on the south side of an old ditch, called and known as Labeaume's south ditch." . . . Rec. 270.

This finding, and decree upon it, dismissing plaintiff's former bill in 1858 (Rec. 272), is conclusive record evidence of the facts of location of the reservation on the ground, and bars plaintiff's pretentions in this second suit for the same cause of action.

If the deed from Brazeau to *Chouteau* of 1816 could, by any violent construction against the express terms of description, be held to convey the land sued for, it would not operate to convey by force of estoppel or rebutter the after acquired title held by this Court to have vested in Brazeau for the first time in 1862, by force of the new patent. The said deed of 1816 was a mere release or quitclaim, for the consideration of one dollar, and contains no words to pass the said after acquired title by the patent. (Rec. 39–40.) The construction of said deed is to be determined under the principles of the common law, which had been adopted in Missouri in January, 1816. At common law, this deed would not operate by estoppel or rebutter to pass an after acquired title. See Rawle on Cov. for Title (1st Ed.), pp. 335 to 345, and cases cited. Also Jackson *vs.* Hubble, 1 Cowen, 613; Jackson *vs.* Winslow, 9 id. 18; Jackson *vs.* Bradford, 4 Wend. 622; Pelletreau *vs.* Jackson, 11 id. 119; Jackson *vs.* Waldron, 13 id. 178; Kellogg *vs.* Wood, 4 Page, 598; Hoyt *vs.* Dimon, 5 Day, 479; Dart *vs.* Dart, 7 Conn. 250; Fox *et al vs.* Widgery, 4 Greenl. 214; Lowery *vs.* Williams, 13 Maine, 282; Ham *vs.* Ham, 14 id. 351; Baxter *vs.* Bradbury, 20 id. 260; Pike *vs.* Galvin, 29 id. 185; Kimball *vs.* Blaisdell, 5 N. H. 533; Mark *vs.* Willard, 13 id. 389; Middlebury Call. *vs.* Cheny, 1 Verm. 366; Blake *vs.* Tricker, 12 id. 39; Loomis *vs.* Skinner, 3 Pick. 52; Wade *vs.* Lindsey, 5 Pick. 413; Blanchard *vs.* Brooks, 12 Pick. 47; Gough *vs.* Bell, 1 Tabr. 165; Douglass *vs.* Scott, 5 Ohio, 194; Terrett *vs.* Taylor, 9 Cranch, 43; Blight *vs.* Robertson, 7 Wheat. 548; Mason *vs.* Muncaster, 9 Wheat. 455; Lewis *et al vs.* Baird, 3 McLean, 80; Bush *vs.* Marshall, 6 How. 291.

Under the statutes of Missouri of 1825 and 1835, greatly extending

the operation of deeds to pass after acquired titles, this deed would not be effectual to pass such title. Gibson *vs.* Chouteau's heirs, 39 Mo. 566, 569. It is therefore clear that the plaintiff has no title to the land sued for, and according to the opinion in this case, Brazeau and his heirs are held to be the present owners, which might be so, if Labeaume's representatives did not hold the elder patent and sixty-four years' adverse possession.

The Supreme Court of the United States has held, upon this identical title in West *vs.* Cochran, 17 How. 412, 17; and Magwire *vs.* Tyler, 1 Black. 198, that Brazeau's land was located south of Labeaume's ditch, and Labeaume's land was located north of said ditch, which is conclusive upon the question of the respective locations; and also, that the deeds of Brazeau to Chouteau, and of Brazeau to Labeaume, did cover these respective tracts of land and no others. So ruled in *Picot* vs. *Bogy, et al*, 26 Mo. 422.

In Landes *vs.* Brant, 10 How. 348, this Court held "that the patent issued to Clamorgan on a confirmation of 1810," like Labeaume's, "is conclusive evidence that he was the lawful owner of the title thus confirmed, and that he had the best *Spanish* title to that tract of land."

Magwire can have no derivative title to the land sued for, under the case of Picot *vs.* Bogy, 26 Mo. 422.

Note. The reservation of Brazeau as described in the deed of 1798 cannot be located elsewhere than at the beginning point, "the foot of the mound;" but in the briefs of the counsel for plaintiff, it is erroneously stated that the foot of the mound and the foot of the hill are the same, and are at Labeaume's ditch. To support this gross misstatement, the plaintiff introduced a monstrous topographical map, placing the foot of a hill made out of a plain and the mound, four arpens and twenty French feet north of the foot of the *Grange de Terre*, Barn of Earth, the controlling monument referred to in the deed for the beginning. The witnesses on both sides prove without any contradiction or difference that this barn of earth is an artificial erection or mound, with its sides as well defined as a fort or pyramid. It is not built *on a hill*, but on a bank of a prairie, commencing four arpens west of the river, rising about seventy-five feet above the bottom land along the river bank. The mound was made by the Indians as a mausoleum for a chief, and the earth had been taken from the prairie near the mound for this purpose.

Rec. 99. A. H. Evans, plaintiff's witness, testified: "The south side of Brooklyn Street just suits the north foot of the mound." . . . "Every part of the mound was made." At p. 100, 101, this witness locates the Brazeau reservation from the words of the deed in the record, as follows:

"I should begin right at the foot of the mound at Brooklyn Street, as he says." At p. 95, 96, N. F. Hyer, evidence to same effect. He is the witness Mr. Evans refers to in the words, "as he says," *supra.* Wm. H. Cozzens testified as plaintiff's witness. On pp. 121, 122, 123, 126, 127, 128, 129, 135, of his testimony, he fixes the foot of the mound four arpens and twenty French feet south of Labeaume's ditch, and he locates the reservation south of the ditch, and the concession to Brazeau at the foot of the mound, and the 4 × 16 arpens granted to Labeaume between his ditches 16 arpens apart.

Wm. Milburn, Surveyor-General, testifies to same facts (Rec. 148, 9). See also M. L. Clark, 93, 94. These are all the surveyors who testified to location, and they all agree that the deed of Brazeau to Labeaume of 1798 begins at the foot of the earth barn; and all but Clark agree that the reservation must be located south of Labeaume's ditch; and Clark says, "the foot of the mound is all around it, and you could just as well locate it at the south foot or west foot as the north foot." (Rec. 94.)

There is no conflicting testimony as to the true location of Brazeau's reservation, in the deed of 1798, being south of Labeaume's ditch at the foot of the mound. There is a conflict of testimony as to the location of Brazeau's Spanish grant, which calls "for the foot of the hill where the mound stands." But the deed is the instrument creating the reservation, and all concur that the controlling call for the beginning at the foot of *the mound* itself is conclusive, and fixes the reservation south of the ditch, where it has been surveyed by the United States in 1852, under that deed, as required by the confirmation, and patented. This Court has held that survey to be conclusive on all Courts and parties on this same title in West *vs.* Cochran, 17 How.; and in the *United States* vs. *Stone,* 2 Wallace, 525, it was held that such a survey never can be annulled.

The topographical map of plaintiff was made on such a scale as to give the impression to the Court that the mound and bank of the grand prairie formed together *a hill,* with its foot at Labeaume's ditch. This monstrous topographical exaggeration turns the mound on the bank of the prairie into a mountain as steep as Popocatapetl, and the attention of the Court was frequently called to it by the counsel for plaintiff, as a topographical map of the *mound and hill* on which it stands. A bank of the prairie was there with a mound on it, but no hill.

The true map drawn on a regular scale shows the barn of earth 22 $\frac{5}{12}$ feet high on the bank of the prairie, its north and south foot well defined. The bank of the prairie is 75 $\frac{7}{12}$ feet high at the mound above

the river; the south ditch is thirty-six feet above the river. The distance from north foot of the barn of earth to the ditch is 792 feet. The descent of $39\frac{5}{12}$ feet in 792 feet is not the descent of a hill, and if it were it has no connection with the mound. No one would regard it on a map or on the ground as the descent of a hill. But the topographical exaggeration makes this almost level surface a steep mountain side. By the scale, one inch of elevation represents $192\frac{1}{2}$ inches, while one inch of horizontal measurement represents 1,580 inches. The 792 feet has a base of six inches, and the ninety-eight feet, an elevation of about six and a half inches. It makes a mountain out of a plain and a mound.

If this scale were applied to a man six feet high and two feet in diameter, he would be over one thousand feet long, and his body would be thinner than a horse hair, while his limbs would not be visible except under a microscope.

It is by such an exaggeration that this Barn of Earth on the bank of a prairie has been turned into a mountain, and this extraordinary location has been made, against all the testimony in the case, and against decisions in the following cases on the same title. *Magwire* vs. *Vice*, 20 Mo.; *West* vs. *Cochran*, 17 How.; *Picot* vs. *Bogy*, 26 Mo.; *Magwire* vs. *Tyler et al*, 30 Mo.; *Maguire* vs. *Tyler*, 1 Black.; and *Magwire* vs. *Tyler et al*, 40 Mo.

Add to these facts and cases a possession of seventy years by enclosures and houses, a possession of twenty-eight years by a boundary line between Labeaume and Brazeau's grantee, Mr. Chouteau, and the case ought to be clearly understood on the question of the construction of Brazeau's deed.

The facts being absolutely established, the construction of the deed of 1798, as a question of State law, must always be, that the land included in the reservation is to be located at the foot of the Barn of earth, la Grange de Terre, or big mound, according to the words of the deed.

THE LAPSE OF TIME IS A COMPLETE BAR TO ALL EQUITIES, TRUSTS, AND TITLES, CLAIMED BY PLAINTIFF IN THIS CASE, IF ANY SUCH EQUITY COULD EXIST, WHICH DEFENDANTS DENY. If it can be supposed that Chambers, Christy and Wright had notice by construction of law of any antagonistic equity, as that the Soulard survey for Labeaume in 1799, or the confirmation of 1810, included the Brazeau reservation, and after continuous possessions by a boundary line for sixty years, and an adverse possession by innocent purchasers for forty-six years, the

plaintiffs are debarred from setting up this equity by lapse of time, being from 1799 and 1810 to 1862. See Piatt *vs.* Vattier *et al*, 9 Peters, 416; Smith *vs.* Clay, 3 Brown's Ch. 640; Kane *vs.* Bloodgood, 7 Johns' Ch. 93; DeConch *vs.* Sarâtier, 3 Johns' Ch. 190; Prevost *vs.* Gratz, 6 Wheat. 481; Hughes *vs.* Edwards, 9 Wheat. 489; Wilson *vs.* Matthews, 3 Peters, 44; Badger *vs.* Badger, 2 Wall. U. S. 87; Miller *vs.* McIntyre, 6 Peters, 67; Hunt *vs.* Wickliffe, 2 Peters, 212; Peyton *vs.* Smith, 5 Peters, 493–4; Earl of Deloraine *vs.* Browne, 3 Brown's Ch. 519 and 633. Even supposing that a trust could have been instituted in favor of the plaintiffs, which we deny, the language of Lord Camden is applicable to such a case. "A Court of Equity has always refused its aid to State demands, where the party has slept upon his rights, and acquiesced for a great length of time. Smith *vs.* Clay, above cited. The statutable bar at law is by analogy, or rather in obedience to the statute adopted as a bar in equity. See Ex parte Dewdney, 15 Ves. 496; Bonney *vs.* Ridgard, 1 Cox. 149; Bickford *vs.* Wade, 17 Ves. 97; Townsend *vs.* Townsend, 1 B. Ch. C. 554; Aggas *vs.* Pickerell, 3 Atk. 225; White *vs.* Ewer, 2 Veub. 340; Pearson *vs.* Pulley, 1 Ch. Cas. 102; Johnson *vs.* Smith, 2 Burr. 961; 3 Bro. Ch. 639, notes; Lacon *vs.* Briggs, 3 Atk. 107; 2 Mad. Ch. 241; 1 Sch. and Lef. 109; Vin. Abr. Limitations, T. note; Bickford *vs.* Wade, 17 Ves. 87.

In general, it is a rule that "if the equitable title be not sued upon within the time that a legal title of the same nature ought to be sued upon, the Court, acting by analogy to the statute, will not relieve. Lewin on Tr. 616; Bond *vs.* Hopkins, 1 Sch. and Lef. 429; Medlicott *vs.* O'Donel, 1 B. and B. 166; Cholmendeley *vs.* Clinton, 2 I. and W. 151. An equitable claim to lands cannot be preferred after a lapse of twenty years, from analogy to the statute of James, which fixed the limitation to the prosecution of rights of entry (id).

All the witnesses who could speak of the transactions in 1799, or in 1810, are dead; and it is not competent for the Court to pass upon transactions, trusts, or equities arising more than half a century ago. Johnson *vs.* Johnson, 5 Ala. 97; Atkinson *vs.* Robinson, 9 Lee, 396; Pye *vs.* Jenkins, 12 Peters, 254; Bowman *vs.* Wattle, 1 How. 193; 2 Sch. and Lefrey, 636; 17 Ves. 87; Mitchell *vs.* Thompson, 1 McLean, 106; Crane *vs.* Prather, 4 I. I. Marsh, 77; Picot *vs.* Page, 26 Mo. 413; 4 Yerg. 97; 6 Yerg. 73; *Thompson* vs. *Lyon*, 20 Mo. 155. In cases of trust, where time and long acquiescence (in that case fifteen years) have obscured the nature and character of the trust, or the acts of the parties, or other circumstances, give rise to presumptions unfavorable to

its continuance, a Court of Equity will refuse relief on the ground of lapse of time, and its inability to do complete justice. *Taylor* vs. *Blair*, 14 Mo. 437; *Keeton* vs. *Keeton*, 20 Mo. 530.

This Court in the opinion gives the plaintiff the better equity in this case, on the ground that Soulard's survey of 1799, for Labeaume, included within it the 4 × 4 arpens reserved by Brazeau in the southeast corner of that survey, and that the confirmation of 1810 was made to Brazeau for that reservation in the same place.

Such an equity if it existed would be barred by the lapse of sixty-three years, where the party defendant has been in possession during the whole period. No case can be conceived of where relief will be granted in equity after such a lapse of time. Ang. Lim. §§ 25 to 29; 382; *Cholmondely* vs. *Clinton*, 2 Jac. and Walk. R. 1.; *Elmendorf* vs. *Taylor*, 10 Wheat U. S. R. 168; *Bowman* vs. *Wathen*, 1 How. 189; *Ricard* vs. *Williams*, 7 Wheat. 59; *Piatt* vs. *Vattier*, 9 Pet. 405; *Bradstreet* vs. *Huntington*, 5 Pet. 402.

THE STATUTE OF LIMITATIONS IN MISSOURI IS A COMPLETE BAR TO PLAINTIFF'S RECOVERY.

In the opinion of this Court, it is held that the confirmation to Brazeau of 1810 is valid, and vested a valid right in him to 4 × 4 arpens of land in the southeast corner of Soulard's survey for Labeaume, for which he was entitled to a survey and patent from the United States, which were executed for him in June, 1862.

If this be so, Brazeau had a clear right of action in the Courts of Missouri, on the confirmation, by the statutes of Missouri, from 1825 to this day. See title ejectment, in each of the codes, and Strother *vs.* Lucas, 6 Pet. 783.

Plaintiff sued defendants' tenant on this Brazeau confirmation in the case of *Magwire* vs. *Vice*, 20 Mo. Rep. and the question of location was left to a jury, who found against the plaintiff.

In the Court of the United States, such an action would not lie; because the dry legal title after the confirmation still remained in the United States, to be patented to Brazeau in fee as required by law. But this legal title could be vested at any time in the confirmee, by survey and patent from the United States, which this Court says was done on the 10th of June, 1862.

In the opinion of this Court, it is held that the legal title to the 4 × 4 arpens in southeast corner of Soulard's survey first vested in Brazeau in 1862 by force of the patent to him; but it is also true that the legal title so vested in Brazeau in 1862 must relate back to the confirmation,

and pass the said legal title to Brazeau by relation, as of the 22d September, 1810.

If this relation does not take effect to vest the legal title in Brazeau at the date of the confirmation to him in 1810, then plaintiff has no derivative title under Brazeau for the land sued for (*Gibson vs. Chouteau*, 39 Mo. and cases cited above, under the fifth proposition as to plaintiff's derivative title).

If this relation does take effect, as it must, under numerous authorities of this Court, and vests a legal title in Brazeau in 1810, then the statute of limitations will bar the plaintiff's action in Missouri. *Gibson* vs. *Chouteau*, 39 Mo.; 587; *Gray* vs. *Givens*, 26 Mo. 291; *Lindell* vs. *Cabaune*, 12 Mo. *Biddle* vs. *Mellon*, 13 Mo. 335; McNair *vs.* Lott, 34 Mo. 285; Angell on Lim. § 396, 1 Greenl. Ev. § 16; Clemens *vs.* Runkel, 34 Mo. 41; 20 Mo. 98; 530; 16 Mo. 273.

By the doctrine of relation, the legal title of Brazeau in the land sued for vested in him on the 22d Sept. 1810, by force of the patent of 1862 which refers to the confirmation and the acts of Congress of 1805 and 1807 as the source of his title (Rec. 55 to 58), and vests the legal title in him according to its origin. This doctrine is settled by the decision of this Court in the following cases: *Rutherford* vs. *Green*, 2 Wheat. 197; *Landes* vs. *Blant*, in a parallel case, 10 How. 373; *French vs. Spencer*, 21 How. 228; Ross *vs.* Doe, *ex dem* Borland, 1 Peters, 664; *Menard's heirs* vs. *Massey*, 8 How. 293, 306, 7; *Beard* vs. *Federy*, 3 Wall. U. S. 478; *Grisar* vs. *McDowell*, 3 Wall. 380; *Stark* vs. *Storrs*, 6 Wall. 402, all in point.

So also it has been uniformly held in Great Britain and the several States of the Union. Viner's Abr. Tit. Relation, 290; 1 Johns' Cas. 81; *id.* 85; Caines, 232; 2 Johns, 520; 4 *id.* 234; 12 id. 140; 15 id. 309; *Jackson* vs. *Ramsay*, 3 Cow. 75; Doe *vs.* Hawland, 8 Cow. 277; *Jackson* vs. *Stevens*, 16 Johns, 110; *Williamson* vs. *Field*, 2 Sand. Ch. 533, 568; *Gibson* vs. *Chouteau*, 39 Mo. 587, 8, 9 and 590; *Boyd* vs. *Longworth*, 11 Ohio, 235; *Alexander* vs. *Merry*, 9 Mo. 524; *Crowley* vs. *Wallace*, 12 Mo. 145; *Jackson* vs. *McCall*, 3 Conn. 75; *Han. & St. Jo. R. R. Co.* vs. *Smith*, 41 Mo. 332, 333, 334.

In Walden vs. *Gratz' heirs*, 1 Wheaton, 292, it was held, "That an adverse possession, under a survey, previous to its being carried into a grant, may be connected with a subsequent possession."

In *Gibson* vs. *Chouteau*, 39 Mo. 587 to 591, Mr. Justice Holmes, a jurist of eminent ability, learning and integrity, and now Royal Professor of law in Harvard University, gives the true reasons for the application of this doctrine of relation to the bar of a title, vested by a patent founded

on a prior inceptive right, in a masterly, learned and logical review of all the cases on relation; and the statute of limitations in Missouri was held by the Court to bar a recovery on the inceptive right as well as on the legal title, which relates to the prior inceptive right, and carries the fee to the confirmee as of the date of the confirmation.

The statute of limitations in such a case runs against the title of Brazeau, and not against any title of the United States, which the laws of the United States had vested in Brazeau in 1810.

By the patent of 1862 to Brazeau, it is admitted by the United States that the legal title conveyed by the patent is founded on the confirmation, which was final as against the United States by the fourth section of the act of 3 March, 1807, p. 441, vol. II. U. S. Stat. at Large. The patent is therefore record evidence, that the title granted by it is in pursuance of said acts of Congress, and takes date on the day of the confirmation in 1810, so as to pass the title by force of said acts of Congress of 1805 and 1807.

Congress alone has power to dispose of the public lands, and the title must pass to Brazeau, in accordance with said acts of Congress; and the patent is only evidence that it has passed pursuant to the said acts, directing it to issue on the confirmation. See cases above cited, and also *Stoddard* vs. *Chambers*, 2 How. 316; *Bissell* vs. *Penrose*, 8 How. 317; Menard's heirs *vs.* Massey, 8 How. 293, 306, 7. The patent, therefore, must, under the repeated decisions of this Court, vest the legal title in the confirmee as of the date of the confirmation.

The cases of Stoddard, 2 How. 316 and 8 How. 317, are in point; and establish, that the United States could not grant lands confirmed by the old Board to any other person than the confirmee, for the reason that such rights were vested by law and could not be divested by law or by patent.

In the opinion of the Court, it is further held, that the general saving clause in Labeaume's patent, of all valid adverse rights, reserved Brazeau's land out of the operation of said patent; and that the new patents of 1862 to Brazeau invested him with a title to the premises sued for, and prevented the running of the statute of limitations in favor of defendants claiming under Labeaume's patent of 1852.

It is respectfully submitted that this question does not affect the running of the statute, and so it has been settled by this Court in favor of defendants, upon points not raised in the opinion.

The patent to Labeaume of 1852 covers the land sued for by express terms of description; and this fact appears on the face of Brazeau's patent of 1862 (Rec. pp. 55 to 58), by express recital, that Brazeau's

patent takes a portion of the Labeaume tract at the southeast corner (Rec. p. 57). The point which this Court has failed to notice is, that Labeaume's patent of 1852 gave defendants a color of title under the United States, on which they could maintain their defence under the statute of limitations. The Labeaume patent also related to the confirmation and the filing of the claim (see cases above cited), and passed a good color of title to Labeaume and his legal representatives for the land described in it, which covered the land sued for. The deed from Labeaume to Chambers granted all the land in Soulard's survey in 1816, by full warranty, and gave good color of title to support the defence of the statute of limitations, and was followed by a continuous adverse possession to this day. 10 How. 375, 6.

This Court has held in several cases, that such a patent as Labeaume's, though it be held that it did not convey the better title, by reason of a better prior existing claim or equity under acts of Congress, did notwithstanding "grant a fee simple title on its face, and is such title as will afford protection to those claiming under it, either directly or having a title connected with it, with possession for seven years, as required by the statute of Illinois." *Bryan et al* vs. *Forsyth*, 19 How. 434, and cases *infra*.

The saving clause in the patent of 1862 to Brazeau, reserving all valid adverse rights, refers necessarily to the prior patent to Labeaume, which is stated in the Brazeau patent to be covered to the extent of 4 × 4 arpens by the new patent.

This Court admits that Labeaume's title under his patent and confirmation would have passed and did pass by force of the patent, in accordance with the confirmation of 1810 made under the acts of Congress of 1805 and 1807; but the Court insists that Brazeau had an older claim and equity, because Soulard included the reservation of Brazeau created by the deed of 1798 within the Spanish survey. If this be so, the statute of limitations is nevertheless a complete defence; for the Labeaume patent gave color of title by a well-defined ambit, to which the possession attached and passed a title by limitations.

A patent with a saving clause, reserving all prior rights and adverse claims, does not take away any prior vested rights; but it amounts to a relinquishment of the title of the United States to the land described in the patent, Doe *vs.* Eslava, 9 How. 446; 7 Wheat. 149; and that the patentee's possession from the date of the patent is a complete defence to this action under the statute of limitations. This Court has repeatedly held this same doctrine. In *Ballance* vs. *Forsyth*, 13 How. 18; *Bryan et al* vs. *Forsyth*, 19 How. 434; Ballance *vs.* Forsyth, 24 How. 183;

Gregg *vs.* Forsyth, id.; Kellogg *vs.* Forsyth, id.; Gregg *vs.* Tesson, 1 Black. 150; Forsyth *vs.* Meehan *et al*, 24 How. 175; *Dredge* vs. *Forsyth*, id.; and Kellogg *vs.* Forsyth, 2 Black. 571, this Court held that a much more specific reservation than the one in Labeaume's patent had no effect to prevent the passing of the fee so as to give color of title to the grantee of the United States, and that the statute of limitations would be a complete defence to the party holding under a patent containing such specific reservation, by a possession of seven years.

In the foregoing cases, which were fully considered by this Court for eighteen years, the plaintiff claimed as the legal representative of a French settler in the village of Peoria. By the act of Congress of May 15, 1820, passed to compensate said inhabitants for the burning of Peoria, during the war of 1812, it was provided, "that every person who claims a lot in the village of Peoria, Illinois, shall deliver on or before the 1st of October next, to the Register of the Land Office, a written notice of his claim, to be filed with the substance of the evidence thereof on which the Register was to report the claim with his remarks thereon to the Secretary of the Treasury, together with a list of the claims which in his opinion ought to be confirmed, which were to be laid before Congress." This report was made according to the said act on November 10th, 1820, describing the claim of Forsyth to a block 300 feet square in said village, with specific boundaries admitted to be correct. On March 3, 1823, Congress passed an act as follows: "That there is *hereby granted* to each of the French and Canadian inhabitants and other settlers in the village of Peoria, in the State of Illinois, whose claims are contained in a report made by the Register of the Land Office at Edwardsville, in pursuance of the act of Congress approved May 15th, 1820, and who had settled a lot in the village aforesaid prior to the 1st day of January, 1813, and who had not heretofore received a confirmation of claims or donation of any tract of land or village lot from the United States, the lot so settled on and improved, where the same shall not exceed two acres." The second section of said act required the United States Surveyor to survey the said lots so granted, plat them, and transmit the same to the Secretary of the Treasury, who shall cause patents to be issued to each claimant. The survey so ordered was made in April and May, 1837, by the Surveyor General of Illinois and Missouri, which was returned, approved, and recorded. A patent was issued to Forsyth on said survey, December 16th, 1845; and on this patent he sued the defendant, who claimed that he had entered the land on fifteenth November, 1837, after the return of Forsyth's survey, and obtained a patent in 1838 for the same land, with the following

reservation in the granting clause, "subject however to all the rights of any and all persons claiming under the act of Congress of March 3d, 1823, entitled, 'An act to confirm certain claims to lots in the village of Peoria in the State of Illinois.'" This Court held in the said case of *Bryan et al* vs. *Forsyth*, that "the elder patent to Ballance under the entry was only an appearance of title; but that it was a fee simple title on its face, and is such title as will afford protection to those claiming under it, either directly or having a title connected with it, with possession for seven years as required by the statute of Illinois."

In the case of *Ballance* vs. *Forsyth*, 13 How. 24, it was held, that the French settlers had a better title under the junior patent than Ballance had under the elder patent; because the reservation in the elder patent was sufficient notice that the title to the French lots did not pass; but nevertheless it was held in all the subsequent cases above cited, that the specific reservation in the elder patent to Ballance of the valid rights of the French settlers did not prevent his taking a fee simple by force of his patent which was held to be void as a title against the French settlers, but that he could under such color of title vested by the elder patent defeat the action, upon the valid junior patent to the French settlers on an older equity by force of the statute of limitations, on showing an adverse possession for seven years.

These cases are conclusive, and extend the rule far beyond this case, and establish by authority conclusive in this Court, after many years of examination on this very question, that the statute of limitations, with a possession of ten years under the elder patent of Labeaume, with a vague, general exception of all valid adverse rights, is an absolute bar to the plaintiff's action on his junior patent of 1862.

By any rule of construction known to the law, it is logically impossible to suppose that the general reservation of all valid adverse rights in Labeaume's patent had any reference to any claim or right of Brazeau in the land granted to Labeaume. His claim is not mentioned in Labeaume's survey or patent; and on the same day when Labeaume's patent was issued, March 25, 1852, another patent was issued to Brazeau for land confirmed to him at the foot of the mound south of Labeaume's south ditch, which is conclusive evidence that the United States did not intend to reserve any land for Brazeau within Labeaume's patent. But if it were so, and if the new patent to Brazeau of 1862 conveyed to him the better legal title from the United States for the same land held by this Court to have been reserved out of Labeaume's elder patent of 1852 for the benefit of Brazeau, yet the color of title given to Labeaume by the elder patent for the same land, connected

with an adverse possession for ten years thereunder, is a complete bar by limitations under the statutes and laws of Missouri.

The elder patent to Labeaume was issued the 25th March, 1852, and this suit was commenced the 18th September, 1862, by plaintiff, more than ten years after the United States had invested defendants, as representatives of Labeaume, with a color of title to this land, described by metes and bounds in the elder patent. By the doctrine of relation, this elder patent to Labeaume gave a good color of title to the defendants and their grantors in 1810, so as to invest them with a color of title as of that date, and support the defence of the statute of limitations.

Under all the authorities cited, it is clear that the ten years' limitation in Missouri had run before the new survey and patent for Brazeau of 1862. Labeaume's patent bears date 25 March, 1852, and Brazeau's survey in May, and his patent in June, 1862. The ten years' possession had operated to validate the title of Labeaume before the new patent of 1862 issued, and to cut off all remedies of plaintiff on his alleged prior equities to the same land made valid by his junior patent. *Bryan* vs. *Forsyth*, 19 How. 434, places the decision on this very ground, that prior to the United States survey for the French settlers, Forsyth's title attached to no land, precisely as Brazeau's title is now held to have attached to no land prior to the United States survey and patent of 1862; and this Court held, that the prior judicial equity of Forsyth to the land patented to him by a junior patent could have no effect to prevent the running of the statute of limitations in favor of a holder of the mere color of title under an elder patent for the same land from the United States. The authority of that case on this question has become conclusive on this Court by a long series of decisions to the same effect above cited. It is impossible to distinguish the case at bar from the cases of the French settlers; they are, in fact, precisely parallel: and as this Court has made the defence of the statute of limitations in State Courts and in the federal Courts on such an elder patent a complete defence and a rule of property throughout the United States, on which large and valuable estates depend, the rule so established cannot be overthrown without shaking or destroying the confidence of the people in the validity, wisdom and integrity of judicial decisions.

If the well-settled rule concerning the effect of the doctrine of relation had been applied to the said cases of the French settlers, the title vested by the junior patent of 1845 in *Forsyth et al* would have related back to the confirming act of 3d March, 1823, and have vested the legal title in *Forsyth et al* as of that date, so that the adverse possession of Ballance *et al* under their elder patents of 1838 would be good as a

defence, when so held by mere color of title under a patent giving the outline and ambit of their tracts, and be a bar against the absolute legal title so vested in the French settlers pursuant to an act of Congress, and make the statute of limitations a valid defence. But under either rule the defence of the defendants is complete.

At common law, sixty years, possession creates a perfect title against anybody. 3 Blackstone's Com. 196. By the Stat. 21 James 1st, ch. 5, sixty years' possession bars the crown. Ang. on Lim. 30, § 35.

All equitable claims are barred by twenty years' possession. §§ 25 to 29, Ang. Lim.; § 382 id.

OTHER CONSIDERATIONS.

The decree of the St. Louis Land Court on a special finding of facts and judgment, June 22, 1858 (Rec. 268 to 272), in the former suit for the same lands, between these same parties, on a similar bill for the same identical relief, being still in full force, not reversed, qualified or vacated, *is conclusive record evidence*, not to be controverted in this case, that Brazeau had no valid adverse right to this land sued for, and that Brazeau's reservation was located south of Labeaume's ditch and patent, so that the reservation in Labeaume's patent could not be held to apply to any valid adverse right of Brazeau's. 2 Phill. Ev., Cow. Hill and Edward's notes, Ed. of 1859, p. 18, 19, 20.

In the case of *West* vs. *Cochran*, 17 How. 412, in a suit on this same title, between the grantees of Labeaume and Brazeau, this Court held in 1854, that "in 1810, the Board of Commissioners confirmed the grant to Labeaume, according to Soulard's survey, that being the effect of the confirmation;" "that in Feb. 1799 the Governor granted the land to Labeaume, with the boundaries asked for, and ordered that Soulard, the Surveyor, should put Labeaume into possession, and execute a survey to serve the interested party to obtain a complete title from the Governor General," . . . 17 How. 410. It was further held, "that in March, 1799, Soulard proceeded to survey the land granted to Labeaume, from which the larger quantity of 374 arpens was found to be within the boundaries *described in Labeaume's petition*. The survey was regularly certified, April 10, 1799, and accompanied by a figurative plat." 17 How. 410. "The line marks of this survey have been retraced in the survey recently made by the United States, and the patent to Labeaume or his legal representatives of the 25th March, 1852, is founded on it." *id.* "That a survey was made and patent issued in 1852 for the Brazeau reservation 'at the foot of the mound,' south of Labeaume's tract,

which passed the title for that land to Brazeau in 1852, and *that no other land could be claimed under that confirmation.*" 17 How. 413, 415.

In *Magwire* vs. *Tyler, et al* 1 Black. Rep. 198, 9, (1861), in a former suit in equity on this same title, between the same parties for the same land, on a similar bill for the same identical relief, this Court held, that the Board of Commissioners acting on Brazeau's concession of 1794 "*confirmed to him his* 4 × 4 *arpens, adjoining Labeaume's tract on the south,*" *id.* 198, . . . "and that Brazeau's tract of sixteen arpens should be surveyed agreeably to a reserve made in a sale from Joseph Brazeau to Louis Labeaume." "This survey was to be made conformably to the reservation in the deed, *and that reservation was at the foot of the mound,*" id. 198, 199.

These two decisions are solemn adjudications on this same title and all equities claimed, and establish by authority in this Court, a rule of property under these two confirmations of 1810, precluding the idea that the United States intended or had the power to reserve any right for Brazeau out of the land patented to Labeaume. It is expressly adjudicated by this Court in these cases, that Soulard in 1799 surveyed the land granted to Labeaume by the Governor, and returned his plat of boundaries; that the United States Commissioners confirmed to Labeaume in 1810 the land so surveyed for him by Soulard according to that survey that the United States patent to Labeaume of 1852; is for the same land confirmed, and invests him with the title under the confirming acts of 1805 and 1807; that the confirmation to Brazeau is for the land south of and adjoining Soulard's survey and Labeaume's patent; that no other land can be claimed under the confirmation to Brazeau; and that Brazeau's reservation is at the foot of the mound south of Labeaume's patent, and cannot be located elsewhere.

The acts of Congress of 1805 and 1807, ordering such confirmations, do not authorize any reservations to be inserted in the patents issued on the confirmations. On the contrary, § 6 of act 1807, 2 Stat. at Large, 441, commands the issue of the patent, for the land described in the certificate of confirmation.

The certificate of the commissioners (Rec. 311) on Labeaume's confirmation directs a patent to issue to him for three hundred and fifty-six arpens, "and orders that the same be surveyed, agreeably to a concession from Zenon Tradeau to Louis Labeaume, recorded in book C, page 339, of the recorder's office, by virtue of a concession or order of survey from Zenon Trudeau, Lieutenant-Governor."

This Court having held that Soulard surveyed Labeaume's tract according to the order of survey of Trudeau, and that the confirmation was

according to that survey, which was also held to be identical with the petition of Labeaume and the order of survey by Trudeau thereon, there can be no adverse right reserved within that survey, or the survey and patent of the United States to Labeaume for Brazeau.

The absolute legal title being vested in Labeaume by the patent of 1852, which by relation to the confirmation passed the legal title to him, as of September 1810, there is no reservation for Brazeau within the boundaries of the patent to Labeaume, arising from the general saving of all valid adverse rights inserted in the patent by the Commissioner of the Land Office, without any authority of law.

If it be true, as stated in the opinion of this Court, that Brazeau's 4 × 4 arpens were located and were confirmed to him in the southeast corner of Soulard's Spanish survey, then the said confirmation operated to pass the title to Brazeau in 1810, by relation from the patent of 1862, for that specific tract of land, which would not be *vague or undefined*, but absolutely fixed and certain, in the form of a square, with equal sides, each four arpens long, in the southeast corner of the Spanish survey of 1799.

Whenever a confirmation is for a tract of land that can be located with certainty, the title passes by force of the confirmation alone, and so the title must pass to Brazeau, in 1810, if the theory of the location of his confirmation, as stated in said opinion, be correct. The authorities are conclusive on this question. *Mitchell* vs. *Handfield*, 33 Mo. 438; *Landes* vs. *Brant*, 10 How. 348, 370; *Ott* vs. *Soulard*, 9 Mo. 581, 600, 1, 2; *Berthold* vs. *McDonald*, 24 Mo. 126; *Harrold* vs. *Simonds*, 9 Mo. 323; *Cottle* vs. *Sydnor*, 10 Mo. 763; *Lander* vs. *Perkins*, 12 Mo. 238; *Guyol* vs. *Chouteau*, 19 Mo. 546; *Magwire* vs. *Vice*, 20 Mo. 429; 18 Mo. 492; *Magwire* vs. *Tyler*, 25 Mo.; Grignon's lessee vs. Astor, 2 How. 319; *Chouteau* vs. *Eckart*, 2 How. 344; *West* vs. *Cochran*, 17 How. 413; *Stoddard* vs. *Chambers*, 2 How.; *Bissell* vs. *Penrose*, 8 How.

These considerations and authorities are therefore conclusive, that the defendants have the right to invoke the defence of the statute of limitations of Missouri as a rule of decision here on the Lebeaume patent of 1852 as against all subsequent or prior titles emanating from the United States. *Leffingwell* vs. *Warren*, 2 Black. 599; *Ross* vs. *Duvall*, 13 Pet. 45; McCluny *vs.* Silliman, 3 Pet. 270.

The evidence in this case is clear, that defendants and their grantees have been in possession of the land sued for sixty-four years before this suit was brought. This Court, as early as 1853, held in *Gamache* vs. *Piquinot*, 16 How. 468, that "we feel exceedingly indisposed to disturb

the State decisions" on questions arising under land laws peculiarly local to the State of Missouri.

How much more careful ought this Court to be not to overrule well-considered decisions, based on "a rule of decision," as held in *Leffingwell* vs. *Warren*, 2 Black. 599. The Supreme Court of Missouri for many years has established as "a rule of decision" that the statute of limitations in such a case as this is a complete defence; and so it should rest, for the security of titles and possessions held for sixty-four years in good faith, under the public surveys of the Spanish and American governments, by houses, enclosures and actual improvements on the land during the whole period.

THE COURT OF COMMON PLEAS OF ST. LOUIS COUNTY HAD NO JURISDICTION OF THIS CASE, under the constitution and laws of the State of Missouri; *and the decree rendered by that Court, and ordered to be affirmed by this Court, is null and void ab initio.*

Amendments to Const. of Mo. § 2, Art. 1, Rev. Code, 1855, p. 90, vests "The judicial power as to matters of law and equity in a Supreme Court, in Circuit Courts, and in such inferior tribunals as the General Assembly may from time to time ordain and establish. (Ratified 1822.) The General Assembly may establish Courts of Chancery. (*id.*) The Circuit Court of St. Louis County was "vested with original exclusive jurisdiction in all civil cases which shall not be cognizable before the County Courts and Justices of the Peace." Rev. Code of Mo. 1845, p. 330, § 6.

It was also vested with "exclusive original jurisdiction in each county in which they may be held as Courts of Equity, in all cases where adequate relief cannot be had by the ordinary course of proceedings at law." (*id.*) The Circuit Court was therefore vested with exclusive original jurisdiction in equity cases, as the Court of Chancery referred to in the constitution.

The Common Pleas was established as an inferior tribunal, having jurisdiction in civil cases, to the extent of $500 in 1840. On Nov. 24, 1855, the jurisdiction of the Common Pleas Court of St. Louis County was enlarged as follows: "Concurrent original jurisdiction with the Circuit Court in all civil actions of every nature and kind whatever, and concurrent original jurisdiction with justices of the peace in all civil actions not exclusively cognizable before a justice of the peace. (Rev. Code, 1855, vol. 2, 1587, § 2.) This section confers no jurisdiction in equity, which had been previously vested in the Circuit Court by the act of 1845. (Rev. Code, 1845, p. 330.)

On Dec. 12, 1855, the General Assembly of Mo. vol. 2, Rev. Code of 1855, p. 1592, repealed and restricted the jurisdiction of the Common Pleas in civil cases, by creating a Land Court for St. Louis County, and giving it exclusive original jurisdiction over all the land cases in law and equity, as follows: "The St. Louis Land Court, established for the County of St. Louis, shall have exclusive original jurisdiction in the following cases: "In all actions, instituted in the County of St. Louis, for recovering the possession of any real estate therein; for enforcing any right, claim, demand or lien to or upon the same; for making partitions thereof; for quieting the title thereto; for enforcing the rights and obligations of lessors and lessees, and their respective assignees; or recovering damages for injuries and wrongs thereto, and staying waste thereof; (and) concurrent jurisdiction with the Circuit Court for the collection of demands, whose consideration is real estate or any interest therein; *provided*, however, that the jurisdiction hereby conveyed shall not take away the jurisdiction in like matters conferred upon justices of the peace, the Law Commissioner's Court, or Probate Court in said county."

Con. Sec. 6, art. 5, gives to the Circuit Court "exclusive original jurisdiction in all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the General Assembly." This did not confer any jurisdiction in equity which had already been vested in the Circuit Court as an exclusive jurisdiction." Art. 5, § 11 Const. of Mo. Rev. Code of 1855, p. 77, § 11. These statutes, under the constitution, leave no jurisdiction in the Court of Common Pleas in land cases, or in equity cases.

§ 7 of the act to establish the Land Court, Rev. Code, 1855, p. 1593, provides that, "cases pending before said Court may be removed into the St. Louis Circuit Court, for the same causes, and in the same manner as causes may now be removed from the St. Louis Circuit Court to the Court of Common Pleas of said county."

The Circuit Court is the Court of original equity jurisdiction, and of original jurisdiction in civil cases. Const. of Mo. Rev. Code, 1855, art. 5, § 6, 11, and 1; § 8, art. 5, gives the Circuit Court superintending control over all inferior Courts. Under the Laws and Const. of Mo., the common pleas had no jurisdiction of this case.

Magwire, the plaintiff, desired Reber to try this case for certain reasons, and changed the venue to effect this object; but the Court of Common Pleas having no jurisdiction over the case, its decree is null and void *ab initio.*

The Court of Common Pleas, although a Court of record, was an infe-

rior tribunal, and its jurisdiction must appear on the face of the record. By the law of Missouri, even the jurisdiction of the Circuit Court must appear on the record and in the constitution and laws of the State, or its judgments are void; and this question may always be inquired into. *Hannibal and St. Jo. R. R. Co. vs. Mahoney*, 42 Mo. 467. This rule has been established for centuries in all countries where the common law prevails; and wherever it appears that a Court has no jurisdiction, its decisions will be utterly void. See Borden *vs.* Fitch, 15 John, 121; Mills *vs.* Martin, 19 id. 33; Latham *vs.* Edgerton, 9 Cowen, 227; Blin *vs.* Campbell, 14 Johns, 432; Sumner *vs.* Parker, 7 Mass. 79; Wales *vs.* Willard, 2 id. 120; Smith *vs.* Rice, 11 id. 507; Cleveland *vs.* Rogers, 6 Wend. 438; Gorrill *vs.* Whittier, 3 N. H. 265; Bowman *vs.* Russ, 6 Cow. 234; Slocum *vs.* Wheeler, 1 Conn. 429; Weston *vs.* Weston, 14 John, 428; Sherman *vs.* Ballou, 8 Cowen, 304; Cunningham *vs.* Bucklin, id. 178; Newdigate *vs.* Dary, 1 Raym. 742; *Noyes* vs. *Butler*, 6 Barb. 613; Rhode Island *vs.* Mass. 12 Pet. 720.

The Court of dernier resort in every State decides upon its own jurisdiction and the jurisdiction of all the inferior Courts to which its appellate power extends. *Davis vs. Packard*, 8 Pet. 323.

Even a plaintiff may assign for error the want of jurisdiction of the Court to which he has chosen to resort. It is the error of the Court to hold jurisdiction when it has none. Opinion by Chief Justice Marshall in *Capron* vs. *Van Noorden*, 2 Cr. 126.

ESTOPPEL BY ACCEPTANCE OF SURVEY OF UNITED STATES.

There is another defence in this case, of estoppel, by acceptance of the survey of the United States, for the reservation at the foot of the mound south of Labeaume's ditch, by the grantees of the Marine Railway Company.

The chain of title of plaintiff is:

First. The verbal sale of Brazeau to Chouteau in 1798 of this reservation, first stated in deed of Brazeau to Labeaume of 1798, and the confirmation of it in 1810, according to the reservation in said deed.

Second. Deed from Brazeau to Chouteau of the reservation at the foot of the mound, on 29th July, 1816, reciting the old verbal sale. (Rec. 39, 40.)

Third. Deed from Chouteau to Strother of 1st June, 1826, for the reservation. (Rec. 41.)

Fourth. Deed from Strother to the Marine Railway Company's trustees for the reservation. (Rec. 42.)

Fifth. Deeds of the Marine Railway Company to Ann Biddle, Peter Lindell, and John Mullanphy's representatives on 5th November, 1841, for all the lands in Brazeau's reservation as then located south of Labeaume's ditch. (Rec. 159 to 167.)

Sixth. Decree of Supreme Court of Missouri vesting the title in the trustee of Ann Biddle for the land south of Labeaume's ditch, in a suit in equity, wherein the Court decrees between the grantee of Magwire and of Chouteau, L. V. Bogy *et al*, and the grantees of the Marine Railway Company, that the title is vested in the grantees of the Marine Railway Company as the owners of the Brazeau reservation, south of the ditch at the foot of the mound. *Picot, trustee of Ann Biddle*, vs. *Bogy et al*, 26 Mo. 422.

Seventh. Deed of Marine Railway Company to John Magwire of the same reservation, north of the ditch of Labeaume, January 2d, 1852. (Rec. 46.)

Eighth. A champertous agreement of Magwire with said Marine Railway Company, that he would prosecute suits at his own expense, for the recovery of said land, for three-fourths thereof, dated 2d January, 1852. (Rec. 242.)

Ninth. Deed from John Magwire to Louis V. Bogy for all the Brazeau reservation wherever situate, dated 1846. (Rec. 240.)

Tenth. Deed of Bogy to Magwire, of 1846, for 4×4 arpens of land north of Labeaume's ditch. (Rec. 315.) The two last deeds have no effect on the title.

Eleventh. Deed of Strother's administrator to Magwire for $315, for this reservation north of the ditch, on a sale the 4th of May, 1846. (Rec. 45.) This deed is of no validity, for Strother had sold all the land he had acquired of Chouteau to the Marine Railway Company in 1830.

It appears from the chain of title, that the Marine Railway Company and its grantees were the legal representatives of Brazeau's reservation wherever it was situated. When the United States survey of 1851–2 for Brazeau was made south of the ditch, the grantees of said Railway Company accepted the survey and patent, and demanded the patent of the Recorder of Land Titles of St. Louis. Rec. 153, 312. These parties used the Brazeau patent in said suit of *Picot, trustee of Ann Biddle*, vs. *Bogy et al*, 26 Mo. 422; and the Court held that Mrs. Biddle, grantee of the Marine Railway Company, was the legal representative of Brazeau's reservation, and entitled to hold her lots under that patent.

But the Marine Railway Company having accepted the survey and patent for Brazeau's reservation south of the ditch, the stockholders of that Company, some of whom had accepted the said survey for Brazeau

of 1852, ordered an agreement to be made with John Magwire on 2d January, 1852, stated in eighth subdivision above. (Rec. 242.)

The law is well settled, that an acceptance of an United States survey of a confirmation by the parties interested, or either of them, operates as an estoppel against the same parties claiming land under the same confirmation in another place. *Menard's heirs* vs. *Massey*, 8 How.; *Carondelet* vs. *St. Louis*, 1 Black.

In the former case of *Magwire* vs. *Tyler et al*, 30 Mo. the Supreme Court of Missouri held that the Marine Railway Company was estopped from claiming the reservation of Brazeau north of the ditch, and that in equity such claim ought not to be enforced. (Rec. 305.)

In conclusion, it is submitted to the Court:

First. That the judgment and decree of the Supreme State Court, having been rendered on a full hearing under the established equity practice in Missouri, as held in *The State ex rel Allen* vs. *The St. Louis Circuit Court*, 41 Mo. 576, 7, 8, and other cases above cited; and the judgment and decree of the Supreme State Court, as a Court of *original* and appellate jurisdiction, being a general judgment reversing the decree of the common pleas and dismissing the plaintiff's bill, — all presumptions in favor of the validity of said judgment, may be invoked by the defendants, and, if any defence stated in the answer and referred to in the proofs appears to have any validity under the local laws of the State of Missouri, this Court is precluded by the Constitution of the United States, Art. 3, § 2, the 25th section of the judicary act, and multitudinous decisions in cases first above cited, from re-examining such defences under State laws, and from making any decision in this case which will in any way, directly or indirectly, affect said defences under the State laws and decisions of the State Courts thereon. And the burden of proof is on the plaintiff to demonstrate beyond all doubt that no defence that might be approved by the Supreme State Court in this case was approved by the said Court.

In view of the many defences under State law in this case, both at law and in equity, which have been held valid by the State Courts of Missouri in this case and many others on the same questions, it appears impossible to say that the decision of the State Court is not founded on some one of those defences under local law, and therefore the judgment of the State Court is conclusive and not re-examinable on those questions.

Second. That the defences under State local law and rulings in equity stated and argued in this brief, are conclusively established by the

record and by the decisions of all Courts of law and equity, directly upon the said defences; and although this Court has referred to three defences in this case under State law, and has incidentally remarked that they are not valid defences under the laws of Missouri, yet as this Court in the opinion in this case has held that jurisdiction can only be exercised in the Supreme Court of the United States over federal questions, and that each and every question under State laws is not re-examinable in this tribunal, it is supposed that the brief references in the opinion to those questions of State law would not be held to be an adjudication upon them; for the reason that in another part of the opinion it is held, that the case of *Magwire* vs. *Tyler*, 1 Black. 198, on the same title between these same parties, did not bind this Court on such questions of State law, but was to be strictly confined and limited as an authority to the single question arising under federal statutes "as to the validity of Brown's survey of 1817." The former case of *Magwire* vs. *Tyler*, 1 Black. 198, involved all the questions and defences under State law that are now relied upon, and they were all passed upon in the State Court by a special finding of facts under the code of 1849, on which a judgment was rendered, making the judgment and decree on the said finding a part of the record. (Rec. 272.)

From the opinion in this case, it would seem to be a necessary conclusion that the said defences under State local laws in Missouri were not re-examinable in this Court; and the affirmance of the judgment in favor of the defendants by this Court in the former case between these parties would leave the former decree of the State Court in full force and effect, not to be reversed or vacated, directly or indirectly, by any judgment, decree or decision in any subsequent case between the same parties.

Third. The effect and operation of said former decree of the State Court, in this suit between the same parties, would be a question of State local law, over which this Court can exercise no revisory powers. That decree is therefore conclusive of all the questions of fact on which the decision in this case is based, and cannot be re-examined here or elsewhere, under the repeated decisions of all our Courts, State and federal, and the rulings of the Courts in England for centuries past.

Many defences under State law were held by the State Court to be valid in said former suit between these parties; and upon all such defences it is virtually admitted in the opinion that this Court has no jurisdiction to re-examine them. Those defences are: estoppel by boundary line; no derivative title in plaintiff under the deeds; no equity; if any equity, it is barred by laches; estoppel of Chouteau to claim this land under

his protests in the General Land Office; defendants are *bonâ fide* purchasers for value without any notice of the equities set up; Brazeau's reservation does not cover the land sued for; Labeaume's patent does cover the land sued for, and was according to the confirmation; the statute of limitations; the title by relation in Labeaume in 1806 to the extent of Soulard's survey, and others.

It cannot be conceived that this Court intended to pass upon or adjudicate these or any other questions of State law, over which it is admitted in the opinion and declared in so many decisions, this Court has no jurisdiction.

Fourth. But the order to affirm the decision of the Court of Common Pleas does, in fact, overrule and adjudicate upon all of said defences and the conclusive estoppel of *res adjudicata.* This order is supposed to have been entered, at the close of the opinion, without a full consideration of its effect and operation. It is manifest that said order ought not to be issued under the rules and practice of this Court, uniformly observed and adhered to since its organization; and now, when it is brought to the attention of the Court, that it has no jurisdiction over the questions of State law, which the execution of that order would directly pass upon and adjudicate, adversely to the judgments and decrees of the State Court on local laws, it is presumed this Court will revoke it, and leave the parties to the forum having jurisdiction in the premises, according to the usual practice in like cases.

Fifth. It now appears that the Court of Common Pleas had no jurisdiction of this land case, either at law or in equity, and no jurisdiction to try it, on change of venue from the St. Louis Land Court. A further question arises, if said Common Pleas had possessed jurisdiction over the cause. The order directs the Supreme Court of Missouri to affirm the decree of the common pleas; but, by the practice in equity cases, the appeal to the Supreme Court with a supersedeas vacates the decree of the inferior tribunal, and the whole cause is to be heard and tried *de novo* on the pleadings and proofs in the case before the appellate tribunal. *State ex rel Allen* vs. *The Circuit Court of St. Louis County,* 41 Mo. 576, 7. On the hearing of such an appeal as this in an equity case, the Supreme Court of Missouri exercises jurisdiction *de novo* over the whole case, and, as the record shows, entered a new decree, after reversing the decree of the common pleas. This new decree vacates and annuls the decree of the inferior Court, as if it had never been made.

At the time this new decree on a new hearing was made, the Common Pleas Court had been abolished by the new constitution of 1865, 6, and a new Court had been established in St. Louis County, having full juris-

diction in law and equity over all cases. The Supreme Court of Missouri could not execute the order of this Court, for there is no existing decree of the common pleas to be affirmed, and the Court itself is abolished, and no execution could issue from any Court if the order were obeyed.

Sixth. This Court has no power under the judiciary act or the Statute of 1867 to order the Supreme State Court to enter up a decree for the plaintiff in that Court, in this case; for by the laws and practice in Missouri, the Supreme State Court cannot enter a judgment or decree in an equity case, except on a hearing *de novo*. That Court must exercise original appellate jurisdiction and judicial judgment in such cases; and on all such questions of State law it has exclusive jurisdiction on appeals, and the undoubted right to exercise judicial discretion. This Court ought not to place that tribunal in the position of performing a mere ministerial act, in a case where the judges are bound by their oaths to exercise their judicial judgment and discretion, according to the laws and practice in Missouri; so that if this Court adheres to its decision on the questions of federal law involved in this case, the order should be limited to the questions of federal law, and remand the case to the Supreme Court of Missouri, for proceedings in conformity with the opinion on questions of federal law.

Seventh. It is solemnly and earnestly urged before this Court, that the exercise of the extraordinary and extra judicial powers assumed by this Court in this order for judgment would concentrate all judicial power in land cases where titles originate under acts of Congress in the Federal Supreme Court, and produce a revolution in the judicial system, which would tend directly to the overthrow of the federal constitution, and the ultimate destruction of the government.

BRITTON A. HILL,

Of Counsel for the Defendants in error.

St. Louis, Oct. 1, 1869.

Supreme Court of United States.

JOHN MAGWIRE,
vs.
MARY S. TYLER *et al.*

Brief of P. PHILLIPS,

The case now before the Court presents a litigation commenced by Magwire in the St Louis Court of Common Pleas, by filing a petition on 10 December, 1862, p. 3. In this he sets forth the Spanish concession to Joseph Brazeau under which he claimed, together with the proceedings for its confirmation with the final action of the government in the issue of a patent to Joseph Brazeau, or his legal representatives, on 10 June, 1862. The petition thus concludes:

"Wherefore, to the end that *equity and justice* may be meted out to the plaintiff, and that he may be protected and established in his just rights, the plaintiff prays as follows: That this Court by its judgment and decree will divest out of defendants all the right, title and interest acquired or claimed by them, and each of them, from Louis LeBeaume, or any one claiming under him, and invest the same in the plaintiff and put him in possession

must necessarily be dismissed. The act of 1789 in conferring this supervisory power carefully defines the cases in which it shall be exercised, and for greater emphasis and to mark the caution with which such a jurisdiction should be exercised, it commands that "no other error shall be assigned or regarded as a ground of reversal, in any such case as aforesaid, than such as appears on the face of the Record, and *immediately respects* the before mentioned questions of validity, or construction of the said Constitution, treaties, statutes, commissions, or authorities, in dispute."

The cases thus defined are brought within the jurisdiction of this Court by means of a "writ of error," and the section then declares that this writ "shall have the same effect as if the judgment or decree complained of, had been rendered or passed in a Circuit Court."

The "effect" of the writ, relates to its function in removing the cause from the inferior Court, and can have no influence upon the question of jurisdiction which had been previously defined.

The section then continues—"the proceeding upon reversal shall also be the same." This refers to the 24 section, which provides, that this Court, on reversal, should render such judgment or decree as the Court below should have rendered or passed. But this was coupled with the limitation, that it should not issue execution, "but should send a special mandate to the Circuit Court to award execution thereupon."

Having thus provided for the proceeding on reversal, the 25 section declares, that if the cause has once been remanded before, the Court, "instead of remanding the cause for a final decision, may, at their discretion, proceed to a final decision of the same and award execution."

The simple inquiry then is, does the decree of the

Supreme Court of Missouri, which is now brought before the Court, by this second writ, present any one of the Federal questions designated by the 25 section? If it does, then this Court has jurisdiction. If it does not, then the Court is without the power of revision, however erroneous they may consider the decree.

As this is the crucial test, we copy for the convenience of the Court, the whole of the decree succeeding the entry of the reversal of its former decree in obedience to the mandate.

"This Court doth decree, that under and in conformity to the laws of the State of Missouri, the said petition of said Magwire is a proceeding to obtain equitable relief only, in respect to the lands in said petition mentioned, and that no right or title to any equitable relief touching said lands or any part thereof is shown by said petition, and the proofs adduced in support thereof."

"This Court doth decree, that in conformity with the laws of the State of Missouri, the legal title to the said lands cannot be tried, adjudged, or determined, under the said petition, and the proceedings thereunder, there being a plain, adequate, and complete remedy, in conformity with the laws of the State of Missouri, in that behalf, and no relief in the proceedings in equity pending before this Court."

"This Court doth decree, that in conformity to the laws of the State of Missouri, the petition of the said Magwire, is a proceeding for equitable relief only, for the purpose of vesting the legal title by decree in said Magwire to the lands therein mentioned, the legal title to which was admitted by the plaintiff in his petition, to be held by defendants, and the only judgment that under the laws of the State of Missouri, can be entered

tween the proceedings under a mandate and proceedings in an original suit, a writ of error is the proper remedy to reverse that judgment. In our opinion no legal distinction exists between the cases."

Here there was no difficulty as to the jurisdiction—the case was plainly within the description of the 25 section, and if that section was constitutional, as the Court decided it to be, there was nothing left but to enter up a judgment reversing the judgment rendered on the mandate.

The other case, (Davis v. Packard,) is so substantially like this as to justify a very particular reference.

Packard recovered a judgment against Davis in the Supreme Court of New York. Davis appealed to the Court of Errors, where, for the first time, by assignment of error there, he brought out the fact that he was a consul of a foreign government.

The Court of Errors affimed the judgment. On writ of error to this Court this judgment was reversed, and the cause remanded to said Court, with "*directions to conform its judgment to the opinion of this Court.*"

On the receipt of this mandate the Court adjudged, in conformity with the opinion of this Court, that "a consul is, by the Constitution and Laws of the United States, exempt from being sued in a State Court." But they went further, in declaring that it had no jurisdiction to reverse a judgment of the Supreme Court of the State for any error of fact, or for any other error than such as appears on the face of the record of that Court. That it, therefore, could not notice the assignment made in their court. setting up the official character of the appellant. That the mode of redress for error in fact was by writ of error, *coram vobis*, returnable to said Supreme Court.

That the defendant in error was, therefore, entitled to have a judgment of affirmance; but as, on filing the mandate of the Supreme Court of the United States, he has moved to dismiss the writ of error to the Supreme Court of the State, it is adjudged that the said writ be dismissed, and that the plaintiff in error be amerced in costs.

From this proceeding a second writ of error was sued out from this Court, and the allegation was, as in this case, that the mandate had not been complied with.

In the case now before the Court, the decision was that Magwire held the legal title. The Supreme Court of the State, in obedience to it, held the same. In the case cited, this Court decided that a consul was not suable in a State Court, and this was announced as the law by the Court of Errors.

In both cases the form of the mandate is the same, to proceed according to the opinion of the Court.

In the case before the Court the bill is dismissed, because by the laws of Missouri the remedy was at law, and not in equity. In the case cited, the writ of error to the Supreme Court of the State is dismissed, because there was nothing on the record of that Court, of which the Court of Errors, by the laws of New York, could take jurisdiction.

This last action was reviewed by this Court on the second writ of error.

In both cases the State Courts were controlled in their action by the State laws defining their jurisdiction.

"It is not admitted," says Marshall, C. J., "that the Court whose judgment has been reversed or affirmed can rejudge that reversal or affirmance; but it must be conceded that the Court of dernier resort in every State

decides upon its own jurisdiction and *upon the jurisdiction of all inferior Courts to which its appellate power extends.* Assuming these propositions *as judicial axioms*, we will inquire whether the judgment of the Court of Errors is in violation of the mandate of this Court.

"Neither the judgment nor mandate of this Court prescribed in terms the judgment which should be rendered by the Court of errors.

" If the jurisdiction of the Court for the correction of errors does not, according to the laws of New York, enable that Court to notice errors in fact in the proceedings of the Supreme Court, not apparent on the face of the record, it is difficult to perceive how that court could conform its judgment to that of this Court otherwise than by quashing its writ of error to the Supreme Court."

It is confidently submitted that these considerations and authorities demonstrate that the Court is without jurisdiction, and that the writ of error must be dismissed.

P. PHILLIPS,
Of Counsel for Defendants in error.

14 *December*, 1872.

I am on judgments
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6 Wall 634
8 Wall 576
11 Wall 38

APPENDIX.

SUPREME COURT OF THE UNITED STATES.

No. 74. December Term. 1872.

MAGWIRE *vs.* TYLER *et als.*

Dec. 5, 1872

POINTS AND AUTHORITIES

On the oral argument in this case, before the Court, on the 17th and 18th of December, 1872, by BRITTON A. HILL, of Counsel for Defendants in Error.

The plaintiff's counsel asks the Court to enter a decree now on the equities of plaintiff as stated in the bill, and to affirm the decree of the Common Pleas. (p. 34 of plaintiff's Brief of 1872.) He repudiates all the opinions of 1869, (8 Wall. 662 to 672,) as to the legal title in Brazeau, and claims alone on Brazeau's equities under the Spanish grant of 1794, claiming the right to divest the legal title of Labeaume and vest it in the plaintiffs.

This court held, in 1869, that Brazeau's reservation of 4x4 arpents was in the southeast corner of Soulard's Spanish survey of 1799 for Labeaume, and that Labeaume entered into possession of it in 1798.

1st. If this be so, then, without disturbing the opinion of 1869, the Spanish law of prescription vests the title of Brazeau to this reservation in Labeaume, as if Brazeau had made a deed for it to Labeaume on the day of confirmation to Brazeau, on the 22d of September, 1810, if Labeaume and Brazeau lived in St. Louis from 1798 to 1810, and if Labeaume entered into possession of all the land sued for in 1798, and continued in possession until the 22d of September, 1810.

This point has not been considered by the Court, and is a perfect defence, under the opinions of 1869, without affecting them, otherwise than this Court has affected them, by withdrawing the mandate of April, 1869, in November of the same year. (8 How. 672.) So that if the Court adheres to the order of November, 1869, the decree of the Common Pleas cannot be affirmed.

Labeaume bought 4x16 arpents of Brazeau in 1798, entered upon it and inclosed it the same year by formidable stockades, built houses upon it, had it surveyed in April, 1799, inhabited and cultivated it as a farmer from 1798 until 1816, sold it to defendant's grantors according to Soulard's survey as it had been confirmed in 1810; gave a full warranty deed for it for $7,960 in April, 1816, to defendant's grantors; and Brazeau, in July, 1816, sold the reservation to Chouteau by deed, declaring that Labeaume had complied with his conditions of purchase of 1798, recognizing the good faith of Labeaume, his possession, and his just title.

This possession of Labeaume gives him, by the Spanish law of prescription in force in Missouri up to the 19th of January, 1816, the whole title, claim and equity of Brazeau in the land sued for, if it was within Labeaume's stockade boundary and Soulard's survey as stated by the Court. No stronger case of prescription is stated in the books than this. The case of *Strother v. Lucas*, 12 Peters, old ed., 469, 479, and brief of Hon. H. S. Geyer, *id.* 789, 790, is directly in point on a similar case decided in 1838, as a rule of property on a title like this, and a confirmation of 1810, for a field lot of St. Louis, now worth many millions of dollars. (Johnson's Civil Law of Spain, 103 to 108; Moreau & Carlton's Partidas Law, 18, p. 332, 369 to 392.) This title by prescription is set up in the answer. (Rec. p. 16*a*, 19.)

And this peaceable possession, held as it was by Labeaume in good faith, as Brazeau admits in 1816 in his deed to Chouteau, vested all the title, equity and claim of Brazeau on the day of the confirmation, 22d September, 1810, in Labeaume, just as if Brazeau on that day had made a deed to Labeaume for the land sued for. This is the end of the case on all equities or title of Brazeau to the land now sued for, if the opinions of 1869 be correct.

2d. So also, the defence of estoppel by boundary line, stated in my Brief of Oct. 1st, 1869, pp. 16 to 21, in this case, vested the

title, equity and claim of Brazeau to the land sued for in Labeaume, if Brazeau owned or had any equity therein, as stated in the opinions of the Court, 8 Wall. 663 to 672. This point has not been considered by the Court in said opinions, and may be considered now, without affecting said opinions, and will end the case in favor of defendants, on the equities now set up in the plaintiff's bill.

3d. The plaintiff's grantor is estopped at law and in equity by accepting the survey of Brazeau's reservation of 1852, for the land south of Labeaume's patent and Soulard's survey. (See my Brief of 2d Dec., 1872, page 41 to 48, and Rec. pp. 15 and 18, side pages.) If Brazeau had any equitable title, claim or pretence to the land sued for in 1855, it is barred now and forever by said acceptance of the survey of 1852 for Brazeau. This point of defence is not affected by the opinions of 1869, in 8 Wall. 663 to 672.

4th. So the estoppel by the survey for Brazeau of 1852 is complete without any formal acceptance of it. (See my Brief of 2d Dec., 1872, p. 48 *et seq.*)

5th. The decree on the special finding of facts in 1858, between the same parties for the same relief, *is a judicial estoppel of record*, precluding this Court, in this new suit between the same parties for the same relief, from rehearing or adjudging the truth or falsehood of the facts so found in the former suit in the special finding of record, remaining in force. (See my Brief of Oct. 1, 1869, pp. 12 to 16, and pp. 22 to 25 of 1867; Herman on Estoppel, § 15, 16, 17.)

The opinions of 1869, (8 Wall.) deny that the decision in *Magwire vs. Tyler et al.*, 1 Black, 198 to 203, is *res adjudicata*, but they do not pass on the question whether the special finding of the Chancellor in 1858, not reversed or vacated and in force, is not *record evidence*, conclusive forever on all courts, upon the same facts then found. This is clearly so, and this Court has no judicial power to hold otherwise in this second suit, under any authority in this country or in Great Britain. (Herman on Estoppel, §§ 26, 27, 28, 29, 30.)

As to those facts so found, all Courts are estopped from inquiring into them or deciding upon them. They are conclusive record evidence of absolute verity. (Herman on Estoppel, pp. 16 to 30. See my Brief of 2d Dec., 1872, pp. 15 to 18.)

This question is not directly affected by the opinions of 1869, (8 How. 662 to 672), and inasmuch as the said special finding of facts cannot be re-examined by any Court in another suit, this second suit, to try the same facts over again, must, as to those facts already specially found, be held barred by the judicial estoppel of record, appearing at large in the record, well pleaded and proved by the record in this case. (Herman, *id.* pp. 16 to 36.)

As to all the facts so found in the former suit, the same facts stated otherwise in said opinions of 1869 have no significance, force or legal effect to contradict them or prevent the conclusiveness of the judicial estoppel by the record of 1858. (*Id.*)

Whenever this suit, or any other suit for this relief, in any form, is tried hereafter, the said special finding of facts in the record of *Magwire vs. Tyler et al.*, of 1858, affirmed by this Court in 1 Black, 198, will be conclusive record evidence of those facts, and the opinions of this Court in 8 Wall. 663 to 672, cannot legally or equitably affect them.

This Court ought now to examine this question and explain the opinions of 1869, so as to give effect to the said special findings of facts in the record of the case of 1858 between the same parties; and in making this review, the opinions in 8 Wall. 663 to 672, will be explained, so as to leave this conclusive record evidence of judicial estoppel a defence available to the defendants.

I supposed the Court would not have heard arguments from the defendants in 1869, as to the truth of the facts found by the former decree on the special finding of facts in 1858, and did not argue the question of the location of Brazeau's reservation. There is no doubt that the facts found by the record of 1858 were correctly found, but they are not open to inquiry, and never can be, in any future litigation for this land between these parties or their privies. (Herman on Estoppel, ch. 2, pp. 16 to 33, and pp. 34 to 109.)

6th. The plaintiff has no derivative title from Brazeau for the land sued for as the reservation, if it be within Soulard's survey and Labeaume's patent, as stated in the opinions in 8 Wall. 662 to 672.

This question has not been passed upon by this court in said opinions, and is open to examination, and will be found for defendants.

If, therefore, Brazeau first acquired a legal title to the land sued for, in 1862, Magwire and his grantors have no deed from Brazeau for this land. (See my Brief of October 1, 1869, pp. 29 to 35.)

If Magwire had a deed for it, he could not file this bill to divest the legal title of Labeaume to the same land.

Whether plaintiff had a legal title or not in 1862, he has no equity. (See my Brief 1869, pp. 21 to 25.)

If he had a legal title in 1862, Labeaume had an older one of 1852, and plaintiff admits it in this suit and has sworn to it in his petition.

7th. If plaintiff's grantors ever had any equities, they are barred by the lapse of sixty-two years after Labeaume built his stockade inclosure in 1798, prior to this suit in 1862. (See my Brief of 1869, pp. 35 to 37, with all the points and authorities.)

This point has not been considered by this Court in 1869, but it is available to defeat the claim of the plaintiff in this suit in equity, wherein plaintiff claims a decree, and repudiates the opinions of this Court on the question of Brazeau's legal title, which was not in issue in the pleadings.

We ask the Court now to apply this defence to the case, without affecting the said opinions of 1869.

8th. The plaintiff has no equity in this case, if the opinions of 1869 are correct, and if Brazeau first acquired a legal title in June, 1862. This suit was brought in September, 1862, after such legal title first vested; and no bill in equity would lie by Brazeau's grantee to divest a legal title of Labeaume's grantees, if Brazeau had the legal title at the time suit was brought. (Read my Brief of October 1, 1869, pp. 21 to 25.)

9th. The plaintiff's counsel is troubled in his mind, in his mental and moral idiosyncrasies, about the defendants' not having set up in their answer that Brazeau had a legal title in June, 1862.

If he had a legal title in 1862, when he sued in September of that year, the plaintiff did not find it out; he swore then he had not, and that Labeaume's grantees had. This Court had ruled in 1855, on the same title, that Labeaume had the legal title to this land, and that Brazeau had not. The plaintiff's counsel asserted

before this Court in 1869 that Brazeau had the legal title; in 1872 he asserts he had not. He admits in 1872 that my statements as to the legal title in 1869 were true, and that his statements were not. He tells the Court now the legal title of Brazeau was not in issue in 1869, when this Court held the legal title was in Brazeau, in conflict with the pleadings, which are solemn estoppels of record in this suit, that Brazeau had not the legal title, and that Labeaume had it. This is a conclusive admission (Herman on Estopp., § 343, and cases cited), and the Court had no judicial power to find it was not true, or to examine the question or decide upon it contrary to the pleadings. *Id.*

No rule of equity pleading requires the defendant on a bill to divest his legal title, to volunteer a plea that plaintiff has it, especially when the Court had solemnly decided in 1855 that defendants had the legal title, and that plaintiff had not (17 How., 412 to 417), and when in 1862, in *Magwire vs. Tyler et als.*, 1 Black, 198 to 203, this same Court had decided, in the case parallel to this, that plaintiff had no equity to divest defendants' legal title.

10th. Plaintiff's counsel says the legal title of Brazeau was not in issue. The pleadings admit it, and I admit it; it had been adjudged as *res adjudicata*, and could not be denied; so that the opinion of 1869, against two conclusive estoppels of record, is *coram non judice* and literally expunged, as if the opinion on that question had never been delivered.

11th. Now, as to the power of this Court to review the opinions of the Court in this case, in 8 Wallace, 663 to 672, I aver the Court has full power to protect its old decisions of 1855 and 1862, in this and all similar cases.

The opinions of 1869 were a mistake, clearly so; plaintiff's counsel admits now they are, and the mandate on the first writ of error issued in 1869 has been obeyed. A new hearing has been had and a new decree has been entered, the effect of which is to present the case *de novo*. Read my Brief of October 1, 1869, pp. 51 to 54.

The Court must now pass on this new decree, and this second writ of error is a new case on another decree of the Supreme Court of Missouri.

It is concerning the same matter, under the new mandate of this Court, of November, 1869, but the Court is to determine this case upon its own merits, under the 25th section of the Judiciary Act, and is not bound by the opinions of 1869 on the first writ of error, particularly as to matters not in issue in the pleadings, and judicial estoppels of record fatal to the existence of the opinions.

This Court must now determine *de novo* if it has jurisdiction, if its mandate has been obeyed, if the decree is according to Federal laws specially set up as the foundation of this suit, and if the new decree is according to equity and good conscience.

The decisions of April and November, 1869, are not infallible as to any questions raised *de novo* on the new hearing on the new mandate of 1869.

If these opinions are infallible, what becomes of the opinions and decisions of 1855 and 1862, by this same tribunal; are they also infallible on the same questions, being directly in conflict with the opinions of 1869? If so, there are two opposite infallible decisions on the same questions, in the same case, on the same title. Which is the most infallible? Which is the best legal title, an old one with possession, or a new one without possession? Can a new title be set up on a new invalid patent, against an older valid patent, so held to be by this Court in 1855?

12th. What the character and force of the decision in 8 Wall. 662 to 672 is, I propose to examine, with a view to its overthrow, under the decisions of Courts of the last resort in like cases.

It was not an unanimous decision. One of the most honest, learned, pure-minded, logical and authentic judges in the United States, the universally lamented Robert C. Grier of Pennsylvania, dissented from both the opinions of 1869. He was eminent as a land lawyer and a constitutional lawyer, and the light of his judicial intelligence illumined the profession he adorned and honored. In such cases of dissent by eminent members of the Court, the opinions have not been regarded as having the same sanctity against review, as unanimous opinions and decisions. (Ram on Leg. Judgt. 208; *Oakley vs. Aspinwall*, 13 N. Y. 507; *Spanon vs. Kingman*, 1 N. Y. 246; Ram, *id.* 218, 227, 223, 224.)

Courts have always power to retrace their steps, when they are

satisfied an error has been committed. (Ram, *id.* 208, 225 and cases cited.)

When the Court does not abide by its own decisions, then no single decision becomes a precedent. (Ram *id.* 227.)

Now the opinions of 1869 are directly in conflict with two solemn decisions of this Court on the same title, made in 1855 and 1862, that were unanimous; and the last decision in *Magwire vs. Tyler et al.*, 1 Black, 198 to 203, is on a special finding of facts on which the decree is based, made part of the record, which is a judicial estoppel of record and conclusive evidence of record not to be contradicted, that the opinions of the Court in 1869 are not binding on this Court or any other Court, as to any facts contained in that opinion, that conflict with the said facts, conclusively proved to be true by the judgment of record, in the former case of 1858, between the same parties, on the same facts and for the same relief.

I claim that the rule of *stare decisis*, and of judicial conclusive estoppel by the record, shall be applied by the Court in maintaining the old cases on the same title, solemnly decided in 1855, in *West vs. Cochran*, and in *Magwire vs. Tyler et al.*, 1 Black, 198 to 203. And this rule requires the Court to annul the opinions of 1869, in 8 Wall. 662 to 672, in defence of the validity and integrity of its own decisions, upon titles where rights have vested upon the faith thereof.

Therefore the decisions of 1869 should be overruled now and forever, because they are unsound in principle; conclusively contradicted as to the facts asserted, by record evidence operating as a judicial estoppel, not to be tried again or impeached by the decision of 1869, and admitted by both parties to have been decided on a question of legal title in Brazeau, which was not in issue in the pleadings, but admitted in the pleadings to be in Labeaume, so as to form another conclusive judicial estoppel of record against the validity of the opinions of 1869.

On the first writ of error in 1869, I made no argument on the question of location, of which this Court had no jurisdiction, if the question had not been settled forever by the judicial estoppel of record of 1858. It was a flagrant contempt of Court by plaintiff's counsel, to argue that question of location against the conclusive judicial estoppel, and the two solemn decisions on the same title by

this Court, as reported in 17 How. 412 to 417, and 1 Black, 198 to 203.

What sanctity surrounds the decision of 1869, that does not better apply to the old cases of 1855 and 1862 on the same title? Titles have vested under the old decisions for many years. Is there to be no end to litigation on this same title in this Court? Will the Court venture to uncover and destroy titles to the land lying south of Labeaume's patent, and within the United States survey for Brazeau of 1852, in the face of a judicial estoppel of record? If so, these proprietors in Brazeau's patent of 1852, will be ruined by having faith in the decisions of this tribunal.

If the decision of 1869 could be maintained, the land south of Labeaume's patent must revest in the United States. It would be better that the land should be swallowed by an earthquake, than have such a *seizin in nubibus*, under judicial inquisitions.

I therefore call upon the Court to stand firmly upon its old decisions and overrule the new one, which is annulled by the judicial estoppel of record, and the previous solemn decisions of the Court on the same title.

The consequences of the new decision are to be regarded, because other parties are affected who are not before the Court.

In fact, the whole body of the law on Spanish titles will be overthrown if the decision of 1869 is maintained. In defence of the Court I ask the annulment of the opinions of 1869. Let them be expunged, ~~so that the records may be cleansed~~.

The plaintiff's counsel has made no reply to any one of the points made in my Briefs of 1869 and 1872, because there is no answer to be made. I insist on each point made.

Let the Court determine what will be the result of the conflict between judicial estoppels, former judgments and *res adjudicata*, and the new opinions of 1869.

BRITTON A. HILL,

Of Counsel for Defts. in Error.

ST. LOUIS, *December* 30, 1872.